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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule; interpretation.

SUMMARY: The NCUA Board is publishing its official staff commentary to Part 707 of the NCUA Rules and Regulations (Truth in Savings). The commentary applies and interprets the requirements of Part 707 and is a substitute for individual staff interpretations. The commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements. In addition, the Board is implementing a provision of the Riegle Community Development and Regulatory Improvement Act of 1994, exempting accounts of unincorporated business associations from coverage of Part 707. A minor housekeeping amendment is also made to Part 707.

DATES: This document is effective on January 1, 1995.

Compliance with Appendix C to Part 707 is optional until May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540; Elizabeth Whitehead, Region I, telephone (518) 464–4180; Gini L. Corso, Region II, telephone (703) 838–0401; Joe W. Ostrowidzki, Region III, telephone (404) 396–4042; Michael J. Schneider, Region IV, telephone (708) 245–1000; Annette K. Moore, Region V, telephone (512) 482–4500; and Bruce Lum, Region VI, telephone (510) 825–6125.

SUPPLEMENTARY INFORMATION:

(1) Background

The purpose of the Truth in Savings Act ("TISA") (12 U.S.C. 4301 et seq.) is to assist members in comparing share and deposit accounts offered by credit unions and other depository institutions. TISA requires credit unions to disclose fees, the dividend or interest rate, the annual percentage yield, and other account terms whenever a member requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the credit union sends to the member. Rules are set forth for share and deposit account advertisements and advance notices to account holders of adverse changes in terms. TISA restricts how credit unions must determine the account balance on which dividends or interest are calculated. TISA is implemented by part 707 of the NCUA's Rules and Regulations ("part 707") (12 CFR part 707), which becomes effective on January 1, 1995, for most credit unions. TISA authorizes the issuance of official staff interpretations of the regulation.

(2) Rule Amendments

The Riegle Community Development and Regulatory Improvement Act of 1994, included a provision amending TISA. The amendment changes the definition of account:

> (1) Account.—The term "account" means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

12 U.S.C. 4313(1). The Conference Report to the Act clarifies the intent of this amendment:

> Section 332 defines the term "account" for purposes of [TISA] as an account used by consumers primarily for personal, family, or household use. The Conferees intend this section to provide a business purpose exemption similar to that provided in the Truth in Lending Act. Under this provision, accounts of unincorporated businesses (i.e., generally, non-profit entities) are exempt from coverage under [TISA].

H.R. Conf. Rep. No. 103–652, 103d Cong., 2d Sess. 179 (1994). In order to implement the letter and intent of this new legislation, the Board is amending the definitions of the terms "account" (707.2(a)) and "member" (7072(q)) in Part 707, as well as other relevant references to unincorporated association accounts (Proposed Commentary, comment 2(a)–3 has been removed from the final commentary). The FRB has already adopted similar changes to Regulation DD. 59 FR 52657 (October 19, 1994).

In addition, a typographical error has been removed from section 707.6(b)(3). The redundant phrase "dollar amounts of the" has been removed; so that the sentence now reads: "The fees shall be itemized by type and dollar amounts."

The Board is adopting these rule amendments without notice and comment. The Administrative Procedure Act provides that notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). The Board believes such a finding is appropriate in this case. The Congress has eliminated a class of accounts from Truth in Savings coverage, and the amendments merely make that change. In light of the Congress' action, the Board has no discretion with regard to the regulatory change; which is required by law and essentially ministerial. The other amendment removes a confusing redundancy in the rule. These amendments are technical in nature and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment for the following amendments is unnecessary and would be contrary to the public interest.

(3) Commentary

On August 3, 1994, the Board published for comment a proposed commentary to Part 707 (59 FR 39486). The commentary is designed to provide guidance to credit unions in applying the regulation to specific transactions and is a substitute for, and a supplement to, individual staff interpretations. The Board received 47 comments: 3 from national trade associations; 14 from state credit union leagues; 1 from a state credit union supervisor; 2 from state-chartered credit unions; 21 from federal credit unions; 1 from a credit union data processor; 1 from a credit union consultant; 2 from law firms; 1 from an

insurance company; and 1 from a bank holding company. Commenters generally supported the proposal.

The Board contemplates updating the commentary periodically to address significant questions that arise. Due to the special needs of small, nonautomated credit unions, and for the reasons explained by the Board in the Final Rule adopted at the July Board meeting, the Board has decided to extend the compliance date of part 707 until January 1, 1996 for credit unions that are not automated and are under $2 million in assets as of December 31, 1993. 59 Fed. Reg. 39425 (August 3, 1994).

In large measure, the commentary incorporates supplementary information accompanying prior rulemakings, and reflects the views expressed therein without substantive change. (See final rule published on September 27, 1993 (58 FR 50394), and final rule, corrections and correcting amendments, published on March 22, 1994 (59 FR 13435).) The commentary also addresses issues that have arisen since the publication of the regulation and technical suggestions or concerns raised by commenters. NCUA's proposed commentary was published before the publication of the FRB's final commentary to Regulation DD. 59 FR 40217. NCUA's final commentary adopts many of the changes made by the FRB in their final commentary. The commentary also reflects NCUA staff's understanding of the FRB's interpretations which have not been publicly published. The commentary, for the most part, does not repeat information provided in part 707. The Board also notes, in response to seven commenters' requests for a delayed compliance date for all credit unions, that most credit unions have already been granted 14 months by the Board to get ready for TISA and part 707. In addition, credit unions can take advantage of the FRB's Regulation DD, and its compliance by other depository institutions, which was implemented in June of 1993. 58 FR 271 (January 5, 1993). The Board notes that the commentary makes no substantive changes to the actual regulation, but merely provides guidance. Therefore, the Board declines to extend the compliance date of the rule; but, to provide credit unions time to comply with the guidance provided in this commentary, and to provide parity to the compliance period provided by the FRB when it promulgated the final Regulation DD commentary, the Board has made compliance with this commentary optional until a period of six months after publication in the **Federal Register**, at which time compliance with the commentary shall be mandatory.

To avoid unnecessary detail, the discussion accompanying the final commentary does not individually mention technical amendments that clarify the proposed text but make no substantive change in meaning.

On December 6, 1993, the Federal Reserve Board ("FRB") published a proposal to amend the regulation's rules for calculating the annual percentage yield for accounts that send dividends or interest prior to maturity (58 FR 64190). (See also the notice extending the comment period published on January 13, 1994, 59 FR 1921.) This FRB proposed rule was withdrawn on May 11, 1994 (59 FR 24376). In its place, a new FRB proposed rule was published on May 11, 1994 (59 FR 24378), as amended on July 11, 1994 (59 FR 35271). The FRB amendments focus on two issues: a desire for the annual percentage yield to reflect the time value of money, and the concern of compliance costs and the impact on depository institutions if the proposed rule is adopted. The NCUA Board is delaying action regarding any adoption of similar amendments to part 707 until the completion of the FRB's rulemaking.

Section 707.1 Authority, Purpose, Coverage and Effect on State Laws

(b) Purpose

One commenter, a trade association for thrifts, correctly commented that the purpose of TISA was to enhance consumer shopping of depository accounts at all financial institutions—credit unions, thrifts, and banks, and urged the NCUA Board to stress this in the commentary. While the commenter is correct, the NCUA Board notes that the purpose is already correctly stated in § 707.1(c) of the rule, and that the purpose of the commentary is to enhance and explain the rule. Since this matter is already clearly covered in the rule, the Board has decided not to repeat it in the commentary. In this same vein, the commenter requested that the NCUA Board encourage credit unions to institute deposit, as opposed to share, accounts in order to provide uniformity of accounts for consumers. The Board does not agree with this comment for many reasons. First, the FCU Act and many state acts require credit unions to have share accounts instead of deposit accounts, and to change these laws is beyond the authority of the Board. Secondly, the members' equity, expressed in share accounts, is a major defining characteristic of credit unions, and has served the credit union movement well throughout its history. Thirdly, the Board does not believe that credit union uniformity in all respects with other financial institutions has been proven to be a desirable goal. While many other financial institutions have been faltering, credit unions, due to their uniqueness, have been growing better and stronger. The membership structure, represented by share accounts, has kept them close to their members and enabled them to provide services unavailable on the same terms from other entities. "Not for profit, not for charity, but for service" is a motto that characterizes the entire credit union movement. For these reasons, the Board declines the commenter's suggestion.

(c) Coverage

In response to questions raised regarding applicability of the rule to United States-chartered credit unions with overseas branches or offices, the Board would like to clarify that the rule does cover such operations, if accounts at such locations are either insured, or insurable, by the National Credit Union Share Insurance Fund (NCUSIF). In addition, if any foreign-chartered credit unions were to establish and maintain branch operations in the United States under the North American Free Trade Agreement (NAFTA), if accounts at such foreign-chartered branches were insured or insurable by the NCUSIF, those operations would also be subject to the coverage of part 707. For this reason, NCUA deleted a reference to state-chartered and federally-chartered credit unions in comment 1(c)–1.

(d) Effect on State Laws

One national trade association commenter suggested that the Board should adopt an additional appendix to Part 707 similar to Appendix C to Regulation DD, entitled "Effect on State Laws." 12 CFR Part 230, App. C. Regulation DD's Appendix C addresses inconsistent state requirements and provides procedures for institutions seeking preemption determinations from the FRB. After receipt of a preemption request, the FRB generally will issue a **Federal Register** notice of its intent to make a preemption determination, and provide an opportunity for public comment. Notices of final preemption determinations are also to be published in the **Federal Register**. The commenter stated that NCUA had not shown any uniqueness reasons for varying from the FRB in not adopting a similar appendix for Part 707; or at least by adopting more guidance in the commentary as to the preemption standards to be used, and means for providing an opportunity to

comment by the affected states and other interested parties. The commenter also pointed out that by allowing affected states and other interested parties to comment, that the impact of any preemption determination could be minimized upon the state. This is in accord with federal policy, as enunciated in Executive Order No. 12612. Therefore, the Board has decided to adopt changes in the commentary to provide preemption standards, and an informal notification process to affected states, allowing sufficient time and opportunity for comment, before issuing any preemption determinations under Part 707. These changes are made in comments 1(d)–1 through 4. Four commenters requested that the requirement for the credit union requesting a preemption determination demonstrate a compliance burden be deleted. One commenter believed that the requirement was reasonable, and should be retained. The Board notes that demonstration of a burden is a caselaw prerequisite for a finding of preemption. Therefore, the Board has not modified comment 1(d)–2.

Section 707.2—Definitions

(a) Account

Comment 2(a)–1 provides examples of accounts subject to the regulation. The FRB, as did NCUA, proposed to narrow the regulation's coverage of trust accounts individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts, to minimize compliance burdens for institutions. Many FRB commenters supported the FRB's general approach, but questioned whether the regulation should exclude accounts held by individuals pursuant to informal trust arrangements such as "Totten" or payable on death (POD) trusts. These commenters noted the purpose of a Totten trust is to avoid probate proceedings to transfer funds remaining in an account upon an accountholder's death. It was also noted that the account's signature card may be the sole evidence of the trust relationship. The FRB commenters suggested, and the FRB agreed, that consumers opening Totten and POD trust accounts be afforded the protections of TISA and Regulation DD. Fourteen NCUA commenters agreed with the FRB's approach. The NCUA Board concurs, and the commentary reflects this approach.

Comment 2(a)–3 in the proposed commentary was removed to reflect the amendments made in Part 707 to implement the Riegle Community Development and Regulatory Improvement Act of 1994. As discussed previously, this change exempts unincorporated association accounts from coverage of TISA and Part 707. As a result, proposed comment 2(a)–3 is not incorporated into the final commentary. This change was also requested by thirteen commenters. Comment 2(a)–2(vii) adds unincorporated nonbusiness association accounts as being exempt from the coverage of part 707, as required by the new legislation.

Fifteen commenters, including two national trade associations, requested guidance regarding permissible synonyms for various types of accounts. For instance, whether credit unions could interchangeably use the term "checking" for "share draft"; or the term "certificate of deposit" for "term share." It is the opinion of the Board that the chief overriding factor to the use of synonyms is whether it is accurate and not misleading. The key consideration is whether a "share account" could be confused with being a "deposit account," or vice versa. Generally, if a disclosure uses the correct legal term of the account once, and the synonym is accurate, the use of the synonym is permissible. For example, a disclosure stating that an account is a "share draft" account, that equates "share draft" with "checking," which has a neutral (neither share not deposit) connotation will be permissible. However, it is never permissible to equate a share account with a deposit account. For example, it is impermissible to call a "share certificate" a "certificate of deposit," though both legally are "term share" accounts for TISA and Part 707 purposes. Similarly, it is impermissible to refer to term share accounts as either "time deposits" or "time accounts," which are terms with inaccurate and misleading meanings in the term share context of part 707. The correct use of synonyms is provided in comment 2(a)–5.

(b) Advertisement

Comment 2(b)–1 illustrates the scope of commercial messages considered to be advertisements. The FRB, as did NCUA, proposed that advertisements would not include direct oral discussions conducted in person regarding a specific account. Many FRB commenters urged the FRB to expand the interpretation to include telephone conversations, but the FRB declined. The FRB believes face-to-face discussions allow prospective customers to learn easily and quickly about basic terms of the account (thus, fulfilling the purpose of the advertising disclosures). Also, the FRB stated that at any time during a face-to-face conversation, consumers may request and receive written disclosures at that time. Thus, the FRB commentary clarifies that except for information about an existing account, commercial messages delivered via telephone or voice response machines are advertisements.

NCUA proposed that telephone conversations initiated by a member or potential member about an account would not be considered an advertisement. Proposed comment 2(b)–1. Two commenters, including a national trade association comments, requested that NCUA maintain this comment in its final commentary. NCUA has kept this provision in the final commentary, though it seems at variance with the FRB. The Board is mindful that NCUA's rule must be "substantially similar" to the FRB, except where modifications are supported by credit union uniqueness reasons or the limitations upon which dividends are paid. Unlike other financial institutions, many credit unions rely upon volunteer staffs who have careers outisde of the financial institutions area. To expect volunteers to follow the technical, complex advertising requirements while on the telephone to their colleagues, friends and neighbors, constituting their fellow members, is unreasonable. Furthermore, it places an additional burden upon the volunteers for oral disclosures, which generally will already have been made, or will be made, in written disclosures. Therefore, after careful review and application of NCUA's TISA authority, and finding that sufficient uniqueness grounds exist for the NCUA Board to grant a variance from the FRB's position, the NCUA Board adopts the position taken in the proposed commentary as comment 2(b)–2(ii). Of course, telephone conversations remain subject to the requirements for oral responses to inquiries. 12 CFR 707.3(e).

One commenter inquired as to what requirements telephone response machines must follow. Telephone response machines are subject to the electronic media exemption of § 707.8(e)(1), and NCUA's treatment of such machines is identical to that of the FRB in Regulation DD. See comment 8(e)(1)(iii)–1. Another commenter requested guidance regarding whether messages on ATM or other computer screens were subject to the electronic media exemption. They are. The coverage of the electronic media exemption is discussed at comment 8(e)(2)(i)–1.

(f) Bonus

Five commenters criticized the example of $25 being offered to a parent or custodian to open an account for a minor in proposed comment 2(f)–2. The commenters stated that under state laws the parent or custodian will often be a joint accountholder on the minor's account. The Board, wishing to accurately reflect state laws, has deleted this example from the commentary.

Two commenters requested a clarification regarding whether payment of an annual membership fee or dues (e.g., such as payment of a membership fee to the National Association of Retired Credit Union Persons (NARCUP) for senior credit union members) would be considered a bonus. A sufficient showing was made that such membership dues payments are not made to open, renew, or maintain an account in the credit union, but instead are payments made to a third party (e.g., NARCUP) as a benevolent gesture to a certain group of credit union members (e.g., seniors, with regard to NARCUP). For these reasons, the NCUA Board finds that such payments of an annual membership fee are not bonuses; and a clarification has been made to comment 2(f)–3(v).

Like the FRB, the NCUA has clarified comment 2(f)–4 discussing the exclusion from bonuses of items of *de minimis value* ($10 or less). (See 26 CFR 1.6049–5(a)(2) published by the Internal Revenue Service (IRS), which discusses the fair market value of property received.) One law firm commenter noted that the IRS citation provided by the FRB may not provide a complete picture of the tax consequences of bonuses. The NCUA Board agrees and has deleted the IRS citation from the final comment. Credit unions are strongly advised to consult their own tax attorneys, accountants, or consultants regarding the tax consequences of the accounts they offer, as such matters are outside of the jurisdiction of NCUA.

Eleven NCUA commenters, including a national trade association commenter, like many FRB commenters, expressed concern about potential violations for failing to disclose as a bonus early in the year an individual item of de minimis value deemed to be a bonus when aggregated with another de minimis item given in a separate promotional program involving the same account later in the year. Comment 2(f)–5 provides guidance about aggregating only the market value of items offered for the same promotional program.

Seven commenters, including a national trade association commenter, inquired whether the provision of free share drafts or checks would be considered a bonus. After consultation with the FRB, NCUA has clarified that provision of free share drafts or checks, whether provided to all members, or only to certain groups, such as minors or seniors, would be considered the waiver of a fee and not a bonus. This is reflected in comment 2(f)–6(ii). Another commenter requested that free meals given to the membership at an annual meeting be included as an example of a bonus, however, under § 707.2(r), such items are considered "non-dividend membership benefits."

One commenter asked that the Board clarify whether the granting of a higher dividend rate on an account if the member elects or uses certain services offered by the credit union (i.e., ATM card, direct deposit, other packaged or linked account terms) would not be considered a bonus, based on the exclusion of dividends from the definition of bonus. The Board confirms this in comment 2(f)–6(vii). Nor, based on definitional reasons, would such higher dividends be considered an extraordinary dividend; this is confirmed in comment 2(m)–1.

(i) Dividend and Dividends

The Board has clarified in comment 2(i)–1, that state law determines the nature of an account for state-chartered credit unions. This was generated in response to two commenters requesting clarification regarding whether federal or state law determined the nature (share or deposit) of accounts offered by state-chartered credit unions. The Board stresses that this is solely a matter of state law, as expressed in state statutes, regulations, interpretive orders, or by any other official means. NCUA will not involve itself in determinations of whether an account offered by a state-chartered credit union is a share or deposit account, but will rely upon applicable state law and the opinion of the relevant state supervisory authority. Similar changes were made in comments 2(p)–1 and 2, concerning the definition of interest.

Ten commenters, including one national trade association, lamented that FCUs would not be able to offer fixed-rate accounts, due to the dividend rate setting process described in comment 2(i)–1 through 3. The NCUA Board wishes to stress that part 707 does not require FCUs to offer only variable-rate accounts. FCUs may offer fixed-rate accounts as long as the FCU, by contract, agrees to give at least 30 days advance written notice of decreases in the initially disclosed dividend rate. However, like a prospective rate set on a variable-rate account, if FCUs offer a fixed-rate account, the NCUA Board believes that, as discussed in comment 2(i)–3, every effort should be made in order to pay the prospective fixed-rate disclosed. The fact that a prospective rate is disclosed on a fixed-rate account, instead of a variable-rate account, does not change the nature of the dividend setting process for share accounts. To clarify this point, language has been added to comment 2(i)–1. Nor does NCUA believe that it is appropriate to counsel credit unions to make their accounts variable-rate, as opposed to fixed-rate accounts, as requested by a few commenters. The NCUA Board has no intention of limiting flexibility available under TISA and Part 707; the number, type, and terms of accounts are decisions within the proper province of each credit union's board of directors and not the federal government.

Ten commenters believed that proposed comment 2(i)–2 promulgated a substantive federal dividend-setting process methodology for all credit unions. The comment is set forth as guidance only, and was not meant to substantively alter any contrary state laws. Therefore, the Board has modified the final comment to use nondirective language. In addition, sample dividend-setting resolutions are also provided in comment 2(i)–4, to provide guidance to the boards' of directors of credit unions. The resolution provided in comment 2(i)–4(i) may be used when the dividend rate is declared after the close of a dividend period. The resolution provided in comment 2(i)–4(ii) may be used when the dividend rate is prospectively set before the close of the dividend period in question, but will be ratified upon the occurrence of certain conditions at the close of the dividend period. Both resolutions contemplate that a list or table of accounts followed by corresponding dividend rates will be attached to the resolution. This will prevent credit unions from having to adopt a separate resolution for each account type. These resolutions are not required, but are provided as guidance of the proper corporate form to be used in declaring dividends.

Nine commenters, including a national trade association commenter, questioned the guidance provided by proposed comment 2(i)–3, which stated that prospective rates may be altered "if sufficient funds are not available, or in the event of a superseding event, such as a significant fluctuation in market rates, natural disaster or emergency that alters the assumptions under which the 'prospective rates' were made." The commenters questioned the legality and prudence of the proposed comment.

Two commenters supported the comment. Basically, NCUA proposed the comment in reference to natural disasters, such as the recent California earthquake that destroyed several credit union offices, resulting in extraordinary expenditures that reduced current and undivided earnings, therefore lessening the amount of funds from which dividends are properly payable. To provide general guidance to credit unions affected by disasters and similar situations, in order to reflect the unique nature of the dividend setting process, and to provide commentary protection in the rare event that a credit union may need to lower a dividend in response to a natural or man-made disaster, NCUA has retained the comment, as revised. It is the intention of the Board that credit unions make every effort to meet the disclosed prospective rates on accounts when such rates are properly declarable, available, and payable, and this guidance has also been added to comment 2(i)–3. However, the NCUA Board disagrees with the position taken by the commenters that NCUA could alter applicable legal principles and agency interpretations on the proper payment of dividends. The questioned statement reflects long-standing NCUA interpretations of section 117 of the FCU Act for federal credit unions, and is supported by well-grounded general corporate law in regards to dividends, as expressed in legal encyclopedias, hornbooks and other sources. Although NCUA believes that the statement would also be applicable for many state-chartered credit unions, since applicable state law controls the dividend process for state-chartered credit unions, this clarification has also been added to the comment. For further information on dividends, and when they are properly payable, NCUA refers state-chartered credit unions and their members to relevant state law.

(j) Dividend Declaration Date

Four commenters requested a clarification as to whether the "dividend declaration date" was the date of the actual board meeting on which a credit union's board of directors declares the dividend, or the actual effective date of the dividend declaration. The importance of the dividend declaration date is to give members and potential members an idea of the timing of the last paid, declared dividend. The NCUA Board never intended for the dividend declaration date to be determined by use of a technical, complex formula. In order to reflect the intent of the use of dividend declaration date, the Board has provided several examples of the types of statements indicating time periods that would comply with the definition. The commenter also requested a clarification on whether "prospective rates" must be properly declared by a credit union's board of directors. Because the declaration of a prospective rate is tantamount to the declaration of an actual rate on an account (since only under rare circumstances would the board not adopt or ratify a prospective rate), the declaration of a prospective rate should be approached by a credit union's board of directors with the same responsibility as a formal declaration of an actual dividend rate. Further discussion of the dividend rate setting process is contained in comments 2(i)–2 and 3 and an example of a resolution to declare prospective dividend rates is provided in comment 2(i)–4(ii).

(m) Extraordinary Dividends

A national trade association commenter, as well as a few other commenters, suggested that this comment be expanded to discuss whether loan interest is considered an extraordinary dividend (no, as arises from the loan relationship and not the share account relationship, FCUs must follow 12 CFR 701.24 in order to make a refund of interest on a loan); the relationship of extraordinary dividends to the APYE (none, extraordinary dividends are excluded from the definition of "dividends" and "interest," and therefore do not enter into the APYE calculation); and the proper methods for calculating extraordinary dividends (by any means determined by the board of directors of the credit union). These changes have been incorporated into comment 2(m)–1. After study, staff advised the Board that extraordinary dividends are often paid on bases not related to the amount of dividends in the account, such as evenly dividing the amount to be distributed by the number of members, or through a formula tied to the number of credit union loan and share account products used by the member. Since extraordinary dividends are not a component of the dividend rate, annual percentage yield, or annual percentage yield earned, and are a unique practice of credit unions, the Board has determined that any procedure devised by a board of directors may be used to figure extraordinary dividends. Of course, it is acceptable if a board were to use either the daily balance method or average daily balance method to compute extraordinary dividends, even though those methods are not required.

Twelve commenters, including a national trade association, requested that credit unions be allowed to use the more common term "bonus dividends" to describe "extraordinary dividends." Originally, the NCUA Board has declined to use the term "bonus dividends" for fears that members would confuse it with "bonuses," as defined by part 707. Final Rule, 58 FR 50394 at 50402 (September 27, 1993). However, after further reflection, given members' familiarity with the distinctions between the two terms, and the long-standing credit union tradition of calling such irregular dividends "bonus dividends," the Board has revised its position. NCUA has no objection to the use of the term "bonus dividends" as a synonym for "extraordinary dividends," as has revised comment 2(m)–2 accordingly.

(q) Member

An example relating to a landlord-tenant relationship in proposed comment 2(q)–2 was deleted as unnecessary by the FRB. A few commenters agreed with the deletion. NCUA has followed the FRB and deleted the example.

The Board also reminds readers that unincorporated association accounts have been deleted from TISA and part 707 coverage by new legislation discussed previously in this supplementary information.

(s) Passbook Account

NCUA, like the FRB, has clarified comment 2(s)–1 that institutions may consider accounts as passbook accounts even when direct deposits are made to the account electronically. The comment tracks the requirements of Regulation E (12 CFR 205.9). But accounts that permit other electronic fund transfers—and thus trigger Regulation E's requirement to send statements at least quarterly—are not passbook savings accounts, and institutions must comply with the statement disclosures in § 707 6 of this part. Accounts that send statements are not passbook accounts for purposes of Part 707, even if members are provided passbooks for their records

(t) Periodic Statement

One national trade association stated that NCUA should clarify that periodic statements are not required on accounts. This is clarified on comment 2(t)–1. In order to provide more uniformity with the Regulation DD format, proposed comment 2(t)–3, Regulation E interplay, has been moved to comment 6(a)–2; proposed comment 2(t)–4, account status information, has been moved to comment 6(a)–3; and proposed comment 2(t)–5, use of ledger and collected balance to calculate annual

percentage yield, has been moved to comment 6(b)(1)–1.

(u) Potential Member

One commenter requested that NCUA clarify that credit unions must provide disclosures to potential members upon request. This is already required in § 707.4(a)(2)(i) of the rule. The purpose of the commentary is to expound upon, but not to repeat, the rule requirements. However, because the Board believes that it may assist credit unions in complying with the rule, the regulatory requirement has been repeated in comment 2(u)–2.

Three commenters suggested that NCUA note that proposed comment 2(u)–2, suggesting that credit unions have sound written procedures in place to identify those for membership, be modified to note its discretionary, rather than mandatory, character. The NCUA Board agrees and has so modified comment 2(u)–2. In the case of a credit union having a permissible indirect lending arrangement with a third party, such as an automobile dealer, credit union's may invoke member verification procedures before providing account disclosures when the potential member is not present at the credit union.

(x) Term Share Account

Proposed comment 2(x)–2 distinguishing between regular share club accounts and term share club accounts has been revised extensively based on comments received and consultation with FRB staff. Basically, although club accounts typically have one feature of a term share account (a maturity date), club accounts are not term share accounts unless they also require a penalty of at least seven days' dividends for a withdrawal of funds during the first six days after the account is opened—subject to exceptions permitted in Regulation D. 12 CFR part 204. As requested by many commenters, the final comment 2(x)–2 explains distinctions between term share club accounts and regular share club accounts. One national trade association commenter requested that NCUA provide the same club account commentary as did the FRB. The Board agrees with, and has adopted, this approach. One national trade association suggested that all club accounts should be treated as regular share accounts by NCUA. Since this position was not taken by the FRB in Regulation DD, and no uniqueness reasons have been proffered to NCUA to differentiate credit union club accounts from club accounts offered by other depository institutions subject to Regulation DD, this position has not been adopted by the NCUA Board.

(y) Tiered-Rate Account

One national trade association commenter requested clarification regarding whether tiered-rate accounts could have minimum balance requirements, and whether a zero rate (0%) could constitute a tier. NCUA has carefully reviewed comment 2(y)–1, and finds no reason to change the guidance provided.

(z) Variable-Rate Account

Comment 2(z)–1 clarifies that a share certificate permitting one or more rate adjustments prior to maturity at the member's option is a variable-rate account. NCUA, like the FRB, believes it is important for members to receive disclosures describing when their dividend rate and APY could change, such as any time limitations on when the option may be exercised.

In response to a commenter, the Board has clarified comment 2(z)–2. In the proposed commentary NCUA summarized that rate decreases and other term changes members' accounts required 30-day changes-in-terms notices to take effect. The final comment clarifies that changes-in-terms notices are required for changes in terms adversely affecting the member. The effective date of other, beneficial term changes would depend upon the account agreement and applicable state law.

Section 707.3—General Disclosure Requirements

(a) Form

Four commenters criticized proposed comment 3(a)–3, which stated that "if a credit union provides one document for several types of accounts, members must be able to understand clearly which disclosures apply to their account." The pertinent regulation states: "Disclosures * * * may be combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member's accounts." 12 CFR 707.3(a). Since the Board did not mean to place an additional burden upon credit unions, but merely to paraphrase the rule, to eliminate any potential confusion the Board has revised the comment to more closely pattern after the regulation.

(b) General

Comment 3(b)–2 provides guidance on the specificity required when time periods are disclosed. For example, the FRB believes slight variations in compounding cycles are consistent with the notion of "monthly" cycles, which are often not based on an actual calendar month. Many FRB commenters generally supported the FRB's approach, but expressed concern about the proposal's limitation of 28–33 days to describe a month. The FRB decided to adopt a standard of roughly equivalent intervals occurring during a calendar year. The FRB believes this standard is consistent with TISA, provides flexibility, and eases compliance. For the reasons provided by the FRB, the NCUA Board also adopts this approach.

(d) Multiple Members

Proposed comment 3(d)–1 permitted credit unions to give a disclosure to a nonmember joint accountholder. Four commenters, including national trade association commenter, noted that the proposed interpretation was incorrect. Under § 707.2(q)(2), nonmember joint accountholders are deemed to be members for purposes of part 707. Therefore, the distinction made was an invalid one, and has been deleted from the commentary.

(e) Oral Responses to Inquiries

Comment 3(e)–1 reflects that disclosures need only be made as appropriate. Therefore, if a member telephones a credit union for information, the credit union need not disclose a telephone number to call, as the member would obviously already have that information. This clarification, requested by seven commenters, is added to comment 3(e)–1. Another commenter requested that the Board clarify that this requirement applies only to employees and volunteers acting in the course of credit union business. This change has also been adopted by the Board in comment 3(e)–1, to reflect the unique nature and position of volunteers in credit unions.

Seven commenters requested that the oral response to inquires disclosures be simplified, such as by eliminating any reference to past or prospective rates. To do so would require a change in § 707.3(e) of the regulation and is beyond the scope of this rulemaking. Also, NCUA must stress that the need to disclose that rates are either past or prospective is important to provide accurate, nonmisleading information to credit union members to reflect the facts concerning share accounts. A national trade association commenter noted that proposed comment 3(e)–3 did not closely parallel the language of § 707.3(e). The Board agrees with the commenter, and, on further reflection and to eliminate confusion, has deleted references in comment 3(e)–3 repetitive of § 707.3(e).

Comment 3(e)–3 has been added to conform to a change made in Regulation DD, as requested by five commenters, including a national trade association commenter. It clarifies that this paragraph does not apply to responses to requests for rate information on an existing term share account or on an account not currently offered to members and potential members, such as obsolete accounts.

(f) Rounding and Accuracy Rules for Rates and Yields

(f)(1) Rounding

In response to a national trade association commenter, comment 3(f)(1)–1 has been amended to reflect that account disclosures, unlike advertising and other disclosures, may show the dividend rate to more than two decimal places.

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

Comment 4(a)(1)–1 provides examples of events that trigger the delivery of new account disclosures. The final comment differs from the proposal in several respects. Proposed comment 4(a)(1)–1 discussed the effect of a member-initiated change in the term for an automatically renewable term share account. In response to FRB commenters' requests on the Regulation DD proposed comment counterpart to 4(a)(1)–1, the FRB commentary clarifies that new account disclosures are required when the member changes any account term required to be disclosed (and not merely the duration of a time account). The clarification provides consistency with comment 5(b)–5, and has been adopted as comment 4(a)(1)–1(ii).

FRB commenters expressed concern about having to give new account disclosures when funds are transferred from one account to another, such as when funds in a money market deposit account (MMDA) are transferred to a NOW account because the consumer exceeded transaction limitations on the MMDA. Some requested clarification that disclosures at the time of transfer are not required if disclosures (including change-in-terms notices, if appropriate) for both accounts had previously been given. To minimize possible burdens the FRB adopted that standard in the FRB commentary. For similar reasons, the NCUA Board adopts this position in comment 4(a)(1)–1(iii).

The FRB also received many comments regarding the proposed guidance for "closed accounts." New account disclosures would have been required if institutions deemed an account closed and then accepted a deposit from the consumer. FRB commenters noted that consumers with accounts meeting an institution's criteria for a closed account—such as an account having a $0 balance—do not necessarily intend to close the account. FRB commenters believed consumers would be confused if new account disclosures were sent when a deposit is subsequently made. FRB commenters also expressed concerns about the burden of monitoring accounts to ensure compliance.

TISA allows institutions not to pay accrued but uncredited interest when a consumer closes an account. (See 12 U.S.C. 4303(c)(9).) Based on comments received by the FRB and upon further analysis, the FRB believes that if an institution deems an account closed and treats accrued, but uncredited, interest as forfeited by the consumer, the institution must deem a new account to be opened when a deposit is subsequently accepted. This approach provides flexibility for institutions and consistent treatment for consumers regarding "closed" accounts. Five NCUA commenters agreed with the Regulation DD approach. Five NCUA commenters, including a national trade association, disagreed with the FRB's approach, on grounds that account terms may not have changed between an account's closing and its reopening; that some credit union's data processing systems automatically opened the account with the former account's number; and to modify systems would be a costly, unnecessary expense. While sympathetic to credit union's facing this predicament, because these reasons do not reflect any credit union uniqueness points. NCUA is bound to follow the FRB's rationale, and the NCUA Board adopts the FRB's approach. However, it is the belief of the Board that a credit union is not required to grant a new account number to the holder of a reopened "closed account"; all that is required by this rule is the distribution of a new set of account disclosures. No data processing changes are contemplated by this commentary, and this is reflected in a revision to comment 4(a)(1)–1. The Board hopes that this revision will reduce the compliance burden on credit unions.

The Board does note that account closure for credit unions does not necessarily occur in the same manner as for other depository institutions. A member may voluntarily close an account by actively terminating membership in a credit union. For instance, under the Standard FCU Bylaws, Art. II, § 4, a member who withdraws all of his shareholdings ceases to be a member. The membership of a member may also be terminated by action of the credit union. For instance, a member may be expelled by majority vote of the membership under Standard FCU Bylaws, Art. XVI (and 12 U.S.C. 1764(a)); or an FCU may terminate a member's membership if the board of directors has adopted a nonparticipation policy, which has been publicized to the membership (12 U.S.C. 1764(b)); or if a member falls outside of the credit union's field of membership (e.g., the member moves out of the geographical coverage of a community-based credit union), unless the credit union has adopted a "once a member, always a member" policy under Standard FCU Bylaws, Art. II, § 5. If a member merely lets the membership share account drop below the stated par value, neither the membership nor the account of the member are terminated. Standard FCU Bylaws, Art. III, § 3; NCUA Letter to Credit Unions No. 70 (November 29, 1982). Under the Standard FCU Bylaws, once an account is closed, and the membership terminated, both the membership and the account must be reestablished. Therefore, the "closed account" guidance adopted by the NCUA Board conforming to that of the FRB applies only to accounts closed by the member or the credit union in conformance with applicable federal or state law. This clarification is made in comment 4(a)(1)–1. This clarification agrees with guidance provided in the preamble to the final part 707. 58 FR 50394 at 50414 (September 27, 1994)

Comment 4(a)(1)–2 clarifies that an institution acquiring accounts through a merger or acquisition is not required to provide new account disclosures. However, such accounts are required to calculate dividends by either the daily or average daily balance method; comply with § 707.5(a)(1) if it chooses to change terms of the acquired account; and follow the periodic statement requirements, if applicable. As the accounts are no longer offered, no advertising rules should ever be triggered. NCUA does note that certain term share accounts no longer currently offered may require new account disclosures if they are nonrollover or if new account disclosures would be required under § 707.5. Private merger and purchase of asset and shares transactions are distinguishable, however, from acquisitions or mergers involving the National Credit Union Share Insurance Fund (NCUSIF). In a government-assisted acquisition, the acquiring institution receives only the member's funds on account. The

account contract or other legal obligation—the terms and conditions of the account such as fees—stays (and ultimately terminates) with the failed credit union. Thus, new account disclosures must be provided if the member chooses to open an account with the new institution. Also, if fees are imposed before the new account relationship is established, the fee must be disclosed prior to imposition.

Two national trade association commenters, as well as fourteen other commenters, requested that a clarification be issued regarding guidance in proposed comment 4(a)(1)–1. Two commenters requested that the provision be deleted as unnecessary and confusing. NCUA had proposed that if a member were to open separate subaccounts from a main account and if the terms were identical to that of the main account, that new disclosures would not have to be provided to the member. The commenters noted that the terms of an account will rarely be "identical" to those of a subaccount. The Board agrees with the commenters, therefore the proposed comment (now comment 4(a)(1)–3) has been amended to reflect that new disclosures need not be provided if the credit union has already provided combined disclosures for the main and subaccount within a reasonable time of when the subaccount is opened and the applicable disclosures are still accurate when the subaccount is opened.

(a)(2) Requests

(a)(2)(i)

As requested by a national trade association commenter, comment 4(a)(2)(i)–1 clarifies that institutions are not required to send new account disclosures for accounts no longer offered to the public.

A national trade association requested that NCUA offer credit unions the choice of offering members and potential members either account disclosures or rate sheets in responses to requests for disclosures under § 707.4(a)(2). Since the rule only permits account disclosures to be provided upon request, and the proposed rulemaking concerned only Appendix C, the commentary to part 707, the commenter's request is beyond the scope of this rulemaking. The Board would violate the requirements of the Administrative Procedure Act to consider such an amendment in this final rule. Also, as no credit union uniqueness arguments were presented, the NCUA Board does not believe that even if such request were within the scope of this rulemaking, that it would adopt such an amendment.

(a)(2)(ii)(A)

Comment 4(a)(2)(ii)(A)(2)–1 clarifies that when responding to a request for disclosures by giving rates "accurate within the most recent seven calendar days," institutions should calculate the time period from the date the institution sends the disclosure. This clarification is based upon a similar change made in the final Regulation DD commentary.

(b) Content of Account Disclosures

(b)(1) Rate Information

(b)(1)(ii) Variable Rates

Comments 4(b)(1)(ii)(B)–1 and 4(b)(1)(ii)(C)–1, dealing with rate changes within the institution's discretion, have been modified. FRB commenters believed rates derived from formulas based on an institution's cost of funds, for example, are not "solely" in the institution's discretion. In response to FRB commenters' requests, both comments were revised in Regulation DD for clarity and consistency. A national trade association commenter has also made the request that NCUA conform to the Regulation DD commentary. For the reasons stated by the FRB, and for uniformity, the NCUA Board has done so.

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

Three commenters believed that proposed comment 4(b)(2)(i)–2 was confusing in that readers might be misled to not disclose dividend periods for dividend-bearing accounts. To allay such fears, the comment has been revised to clarify that a dividend period should be disclosed on all dividend-bearing accounts.

(b)(2)(ii) Effect of Closing an Account

As requested by one commenter, comment 4(b)(2)(ii)–1 is modified from the proposal to reflect that state or other law may affect an institution's ability to include in its contract specific member actions considered by the institution to be a request to close the account.

Five commenters failed to understand the necessity of mentioning the FCU bylaw restrictions on closing member's accounts in proposed comment 4(b)(2)(ii)–1. Unlike banks and thrifts which can contractually close accounts for non activity, an FCU cannot close a member's account when it drops below the par value of one share. Instead, the FCU must give the member at least six months to bring the account back up to par value. To highlight this very important membership distinction, the bylaw requirement is mentioned in the comment. The NCUA believes that it is a critical distinction of the member of FCUs, and some state-chartered credit unions, and declines to remove the comment from the final commentary.

(b)(3) Balance Information

(b)(3)(i) Minimum Balance Requirements

Three commenters requested that the Board not require the par value of a share to be disclosed, arguing that it is a membership, not a minimum balance, requirement. The NCUA Board disagrees with this approach. A member is generally not entitled to membership rights, including transacting on accounts, until the par value of a membership share is fully paid-in. Therefore, the payment of a full par value share is a minimum balance requirement, as is stated in comment 4(b)(3)(i)–1.

(b)(3)(iii) When Dividends Begin to Accrue

One national trade association commenter requested that the NCUA delete proposed comment 4(b)(3)(iii)–1, as in the commenter's opinion, such disclosures are not necessary for credit unions that begin accruing dividends for all deposits on the day of deposit. Even if all credit unions did begin to accrue dividends for all deposits on the day of deposit, which even the commenter admits is not the case, the Board believes that its commentary should remain substantially similar to that of the FRB. Therefore, the Board has left the proposed comment unchanged in the final commentary.

(b)(4) Fees

The FRB provided additional guidance in comment 4(b)(4)–1 for fees imposed for sending to consumers checks that otherwise would be held by the institution. Comment 4(b)(4)–2 clarifies that photocopying fees are incidental fees not required to be disclosed. NCUA has adopted both of these changes to conform to Regulation DD. In response to a national trade association commenter, other clarifications have also been made by the NCUA Board: (1) That "fees related to the routine use of an account must be disclosed;" and (2) that fees for statements returned to the credit union because of a wrong address need not be disclosed. However, the Board disagrees with the commenter, and believes that it is necessary, in order to conform with the final Regulation DD commentary, that dormant account fees and inactivity

fees be disclosed. This clarification is also made in the final commentary.

Other commenters requested that the Board classify fee types not discussed in the proposed commentary: dormant account fees, locator fees, overdraft line of credit access fees, wire transfers, and automated clearing house (ACH) transfers. These fees have been classified in comment 4(b)(4)–1. In response to another commenter, the Board has added a reference that merely providing fee information to members in an account disclosure may not be enough to gain the legal right to impose the fees involved under applicable state law.

(b)(5) Transaction Limitations

Eleven commenters, including two national trade associations, requested that NCUA not require disclosures based upon a credit union's bylaws that could be imposed and act as transaction limitations upon an account. The commenters stated that it would place credit unions at an unfair competitive advantage with banks. One national trade association argued that since the bylaw requirements were rarely invoked, that they should not be disclosed unless they were to be invoked, in which case members would be notified through a change-in-terms notice. After consultation with FRB staff, NCUA learned that the FRB does not require disclosure of notice of withdrawal, and other unusual, rarely invoked, requirements under state and local law under Regulation DD. For reasons of parity, uniformity, and conformity, NCUA also adopts this approach, reflected in comment 4(b)(5)–1(iii).

However, the Board does encourage credit unions to publicize bylaw limitations, and other policies, that could potentially affect a member's ability to use his account. Credit unions are different from other financial institutions in that the bylaws form a contract between the members and the credit union. Any restrictions upon a member's account arising from the bylaws is as real as a restriction arising from the account contract. In fact, many members are unfamiliar with their bylaws. There are presently no federal requirements for a credit union to publicize its bylaws among its members, even though it has long been NCUA policy to encourage credit unions to educate their members regarding the content of their credit union's bylaws. The Standard FCU Bylaws only require that FCUs make their bylaws "available for inspection by any member." Standard FCU Bylaws, Art. XIX, § 6. In state-chartered credit unions a member's right to view the bylaws is dependent upon state law, which laws sometimes require a proper business purpose. If credit unions believe the transaction limitations in the Standard FCU Bylaws to be too restrictive, it is suggested that they consider petitioning the appropriate NCUA Region for a nonstandard bylaw amendment. However, FCUs are cautioned that NCUA will not entertain petitions to change either Art. III, § 3 (allowing members at least 6 months to increase a membership share to par in order to retain membership) or Art. III, § 5 (reserving the right to require 60 days' notice on withdrawals, historically to be sued in the event of an emergency). Seven commenters agree with this approach.

One national trade association commented that credit unions should not have to disclose suspension of services policies, because such policies are not a common practice. For the reasons stated in the preceding paragraph, NCUA agrees with this approach. While not encouraging their use, NCUA has opined that an FCU may suspend services to members who have caused a loss to the FCU if a proper suspension of services policy is adopted by the FCU's board of directors. A proper suspension of services policy should state: (1) When the services will be suspended; (2) which services are suspended (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.); (3) note that the member has a fundamental right to maintain a share account and vote in annual and special meetings; and (4) provide for methods of reinstatement of services by the member. In addition, the suspension of services policy should be publicized to members, and not operated discriminatorily, in violation of the Equal Credit Opportunity Act, Regulation B (12 CFR part 202), the Bankruptcy Code, or any other applicable law. Due to the consequences deriving from a suspension of services policy, NCUA believes that those credit unions having such policies should publicize them in detail to their membership.

(b)(6) Features of Term Share Accounts

(b)(6)(ii) Early Withdrawal Penalties

For uniformity and parity reasons, the NCUA Board has adopted comment 4(b)(6)(ii)–4. The comment was added to Regulation DD in response to FRB commenters requesting guidance for disclosing early withdrawal penalties.

(b)(6)(iv) Renewal Policies

At the request of a national trade association commenter, the last sentence of proposed comment 4(b)(6)(iv)–2 regarding club accounts has been removed as being unnecessary, especially in light of the revised comment on club accounts. Comment 2(x)–2.

(b)(8) Nature of Dividends

A national trade association commenter requested a revision of proposed comment 4(b)(8)–2, to reflect that if a member already had a share account at a state-chartered credit union offering deposit accounts in accordance with state law, share account disclosures would not be required. The commenter's position is unfounded. Since the share account is a currently offered account, there are no grounds under either TISA or Part 707 to exempt it from the disclosure requirements. Therefore, the final comment is unchanged. Similarly, two other commenters from Georgia requested that the comment reflect certain unique provisions of Georgia law. NCUA believes that state law determines whether an account is a deposit account or a share account for accounts in state-chartered credit unions. However, to revise the comment to reflect one state's laws, to the exclusion of other states, would not be useful. Therefore, the NCUA Board has modified comment 4(b)(8)–2 to reflect that state law controls the nature of accounts for accounts in state-chartered credit unions. The Board believes that this action will enable state credit union supervisors to provide proper guidance to state-chartered credit unions by interpreting various state laws without federal interference.

(c) Notice to Existing Accountholders

A national trade association commenter requested that NCUA delete a statement in proposed comment 4(c)–4, which stated that credit unions complying with part 707 in advance of the compliance date would need to comply with all aspects of part 707. NCUA staff has verified the position in the proposed comment with FRB staff, and since NCUA must maintain substantial similarity with the FRB, and no uniqueness grounds were presented in order that an exemption could be justified, NCUA has not changed the proposed comment.

Four commenters requested that NCUA clarify that credit unions that have complied with TISA and part 707 requirements before the compliance date, need not send second disclosures.

The NCUA Board has clarified this in comment 4(c)–4. The Board also wishes to clarify, in response to a question raised by a commenter, that NCUA does not require any credit union to issue new accounts, including new certificates, on the mandatory compliance date of part 707. All that part 707 requires is that credit unions send a notice to certain members of the availability of disclosures, or the disclosures themselves, by, on or soon after the compliance date, to have disclosures reflecting the terms of accounts offered available, to make certain periodic statement and advertising disclosures, and to pay dividends on the full balance in the account using the daily balance or average daily balance method. Basically, no new accounts need be issued; only accurate disclosures conforming to part 707 reflecting accounts need be available.

Section 707.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice Required

In response to the comments of eleven commenters, including a national trade association commenter, comment 5(a)(1)–1 has been amended to clarify that unless credit unions have reserved the right to change terms in the account agreement or disclosures, they cannot change terms by simply providing a change-in-terms notice, and to clarify that change-in-terms notices can be included as a highlighted portion of a credit union's newsletter provided to all affected members. Another commenter requested that guidance in the final NCUA Truth in Savings rule allowing notice by means of mail, newsletters, and statement stuffers, be provided in the commentary. Final Rule, 58 FR 50394 at 50422. The Board has added this information to the final commentary.

Comment 5(a)(1)–3 provides guidance on an institution's responsibility to provide change-in-term notices when account disclosures reflect a term that will change upon the occurrence of an event. The comment has been revised to conform with the final Regulation DD commentary.

One commenter requested guidance on which terms needed change-in-terms notices in order to be changed. Section 707.5(a) refers to those terms required to be disclosed under § 707.4(b), if the change may decrease the APY or adversely affect the member. The NCUA Board believes the spirit and intent of TISA is that most changes in the required account disclosures should be disclosed to members to enhance the ability of members to comparison shop for accounts.

(a)(2)(ii) Share Draft and Check Printing Fees

In response to FRB comments received, comment 5(a)(2)(ii)–1 has been expanded to exclude increases in fees for printing deposit and withdrawal slips from change-in-term notice requirements, although NCUA, like the FRB, believes that separate charges for deposit and withdrawal slips, which are typically provided along with checks, are seldom imposed. Many FRB commenters stated that, like check printing fees, fees for printing deposit and withdrawal slips are not within the institution's control, since the consumer determines the quantity ordered.

(c) Notice for Term Share Accounts One Month or Less That Renew Automatically

NCUA believes that 20 days is a reasonable amount of time to provide these disclosures, particularly in light of small credit unions, some only open one day each week, which would be subject to this requirement.

Section 707.6—Statement Disclosures

(a) Rule When Statement and Crediting Periods Vary

Four commenters, including a national trade association, stated that proposed comment 6(a)–3 implied that periodic statements were required for credit union accounts. The NCUA has revised comment 6(a)–1 to reflect that periodic statements are not required on credit union accounts. However, any statement setting forth information about an account (other than a term share or passbook account) that is provided to a member on a regular basis four or more times a year, is a periodic statement subject to § 707.6. NCUA cautions credit unions that if transaction information is provided on a periodic statement on a passbook account, that the credit union runs the risk of having the account deemed a statement savings account subject to full periodic statement requirements. This position has been taken after consultation with FRB staff.

Comment 6(a)–1 clarifies that if zero interest is earned during the period, institutions may disclose $0 for interest earned (and the annual percentage yield earned) or omit the disclosure, at their option. This change was made to conform to Regulation DD, and in response to one commenter's request.

Seventeen commenters, including a national trade association commenter, requested that the issue of account status information in proposed comment 2(t)–4 be addressed. Commenters questioned whether accounts not expressly covered by the periodic statement requirement, such as term share and passbook accounts: (1) Were limited to account status information; or (2) were subject to full application of the advertising regulation (12 CFR 707.8); or (3) whether they could disclose any information on such accounts, including rate and APY information, as long as such information was accurate and not misleading. After consultation with the FRB, the proposed comment was moved to comment 6(a)–3 and clarified to indicate that a credit union may provide any information regarding passbook (unless the provision of transaction information on the account turns the passbook account into a statement share account covered by § 707.6) and term share accounts on a periodic statement, as long as the information is accurate and not misleading. For definitional reasons, the periodic statement requirements do not apply. Also, since the information is provided on an existing account, and not as an inducement to open, maintain or renew an account, the advertising disclosures do not apply.

One commenter also asked whether account status information on covered accounts could include joint accountholders' names, year-to-date earned dividends, transaction dates, and social security or tax identification numbers. These issues are addressed in comments 6(a)–3 and 4.

(b) Statement Disclosures

(b)(1) Annual Percentage Yield Earned

A national trade association commenter requested a clarification that the ledger balance and collected balance are not methods to calculate the APYE, but rather methods to determine the balance upon which to pay dividends. This clarification has been made in comment 6(b)(1)–1. To provide more flexibility, and to conform to provisions in Regulation DD, the Board has deleted statements in comment 6(b)(1)–1 indicating that credit unions must use the same balance (collected or ledger) to accrue and pay dividends and to determine the annual percentage yield earned.

(b)(2) Amount of Dividends

To provide uniformity and parity with provisions of Regulation DD, the Board has adopted comment 6(b)(2)–2, but has limited its application to interest-bearing deposit accounts. It would be difficult and burdensome, if not impossible, for a credit union to state

the amount of accrued dividends on a statement, since as discussed in comment 2(i)–3, such dividends are not generally properly declarable until the close of the dividend period.

Comment 6(b)(2)–3 clarifies that institutions may use a variety of terms to disclose dividends earned, and that the regulation does not mandate use of the examples. In response to a national trade association commenter, NCUA has conformed comment 6(b)(2)–4 to the final Regulation DD commentary, and credit unions are permitted, but not required, to show the APYE and dividends as zero, on a closed account on the periodic statement. In response to two commenters, NCUA has revised comment 6(b)(2)–5 to reflect that information, other than the dollar amount, regarding extraordinary dividends may be disclosed on the periodic statement as long as it is not inaccurate or misleading. The Board believes that information regarding the calculation of the extraordinary dividend, and additional APYE and dividend rate figures taking into account the extraordinary dividend, would not be inaccurate or misleading and might offer the member additional useful information on the accounts held by the member.

(b)(3) Fees Imposed

This comment has been changed to reflect the final amendment to § 707.6(b)(3) of part 707 made in this rulemaking to correct a redundant typographical error. In response to three commenters, including a national trade association commenter, various clarifications are made to enhance understanding without substantively changing the meaning of proposed comment 6(b)(3)–2.

(b)(4) Length of Period

One national trade association requested that NCUA clarify proposed comment 6(b)(4)–2, opening or closing an account midcycle. The commenter stated that when a member opens an account in the middle of a statement period the credit union should be required to use the actual number of days the account has been opened, as opposed to the number of days in the statement period. Comment 6(b)(4)–2 has not been changed, as it is in conformance with Regulation DD. However, the NCUA Board believes that the commenter's concern should be addressed, and has plans to address it in the *NCUA Accounting Manual for FCUs.*

Section 707.7—Payment of Dividends

(a) Permissible Methods

(a)(1) Balance on Which Dividends Are Calculated

Comment 7(a)(1)–1 has been expanded to reflect TISA's legislative history, which cites the "low balance" method as an example of a prohibited dividend calculation method.

Proposed comment 7(a)(1)–6 addressed "dormant" accounts. The FRB solicited and received numerous comment on whether an institution should be permitted to withhold the payment of dividends for dormant accounts. Some FRB commenters believed institutions should be permitted to withhold the payment of interest for dormant accounts, if authorized by state or other law and the deposit contract. Other FRB commenters noted that what constitutes a "dormant" account varies widely among the states and institutions. These FRB commenters expressed concern about the impact of the rule if any period of inactivity—however brief—could transform an account to dormant status. Still others raised concerns whether TISA, which requires that interest be paid on the full amount of principal in the account each day, permitted such an interpretation. (12 U.S.C. 4306(a).) Based on the comments received and further analysis, the FRB believes that account inactivity does not affect an institution's duty to pay interest. (See comment 7(c)–3, which provides that institutions must accrue interest on funds until the funds are withdrawn from the account.) The FRB believes this position—reflected in comment 7(a)(1)–6—is consistent with the purposes of TISA and the rule that interest must be calculated for funds in accounts meeting minimum balance requirements for as along as funds remain in the account. For the reasons stated by the FRB, the NCUA Board has revised its comment accordingly. Although two commenters, including a national trade association commenter, requested that the Board revise this comment to also include sample contract language, the Board notes that the FRB did not provide such language, and since the language must be in accord with state law, any attempt to provide uniform national language might result in a disclosure that would not accomplish its objectives in some states. Therefore, the Board declines to provide such sample contract language. Another commenter insisted that NCUA meant "inactive account," which could be defined by the credit union by contract, rather than "dormant account," which is defined by the state. However, NCUA has copied this section from the FRB's Regulation DD, which concerns "dormant accounts." Therefore, NCUA declines to make the nomenclature change to "inactive accounts," which might create a substantive variance from the FRB.

Several commenters criticized proposed comment 7(a)(1)–7, insufficient funds, which states that credit unions are not required to pay dividends on deposits returned for insufficient funds. After consultation with FRB staff, the NCUA Board, for reasons of parity, uniformity and conformity, declines to change the substance of the comment. However, the comment has been reworded, as suggested by a commenter, to clarify its meaning.

Three commenters requested clarification on the time of day to determine the day's balance. As long as the time of day used does not reflect the low balance for the day (such as after debits are taken and before credits are added), any uniform time of day may be used. The time of day so chosen is not a required disclosure. The guidance was provided in the proposed commentary and is in this final commentary as comment App. A, Part II, § 1–1.

(a)(2) Determination of Minimum Balance to Earn Dividends

Two commenters, including a national trade association commenter, noted that proposed comment 7(a)(2)–4, regarding beneficial method, did not conform to the position taken by the FRB in the final Regulation DD commentary. Since no uniqueness reasons exist, NCUA has revised the proposed commentary to conform to Regulation DD in this final commentary. The national trade association commenter also requested a definition of "periodic rate" in lieu of proposed comment 7(a)(2)–2. However, for reasons of uniformity, conformity, and parity, the NCUA Board declines to so modify this commentary. However, more clarification regarding periodic rates will be provided in a revision to the *NCUA Accounting Manual for FCUs.*

Comment 7(a)(2)–7 clarifies limitations on minimum balance requirements to earn interest for club accounts—such as "holiday" or "vacation" club. The rule does not apply to a club account's minimum balance requirements for earning bonuses. This position, taken by the FRB in the final Regulation DD commentary, is also adopted by the NCUA Board.

(b) Compounding and Crediting Policies

Comment 7(b)–3 has been revised to clarify that the circumstances under which an institution may deem an account closed, and that accrued, but uncredited interest may be deemed forfeited, are subject to state or other law, if any (such as limitations in the Standard FCU Bylaws).

Proposed comment 7(b)–4, dealing with the forfeiture of accrued, but uncredited interest for dormant accounts, has been withdrawn for the reasons discussed in 7(a)(1)–6. This change is also in conformance with the final Regulation DD commentary.

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

Proposed comment 8(a)–2 would have required institutions using indoor signs advertising APY's for tiered-rate accounts to state both the lower and higher dollar amount for the tier corresponding to the advertised APY. Many FRB commenters convinced the FRB that stating both dollar amounts is unnecessary. Therefore, for reasons of uniformity and parity, NCUA has adopted the Regulation DD change and the comment provides that a sign is not misleading or inaccurate if it states the lower dollar amount of the tier corresponding to the advertised annual percentage yield.

Institutions cannot advertise accounts as "free" or "no cost" (or terms of similar meaning) if maintenance and activity fees can be imposed. Comment 8(a)–3 address the scope of "maintenance and activity" fees and addresses advertisements for "free" accounts with optional electronic services. FRB commenters were divided on whether fees for electronic services such as ATM access should preclude institutions from advertising accounts as free. Based on the comments received and further analysis, the FRB believes that ATM services are not different from other optional services such as home banking. Fourteen NCUA commenters, including two national trade associations, agreed with the FRB's reasoning and position. For the reasons stated by the FRB, NCUA follows the FRB and has revised comment 8(a)–4(vi) accordingly. One commenter requested a cross-reference to comment 4(b)(4)–1 and 2 regarding fee disclosures, which cross-reference has been added.

The FRB received numerous comments on its proposal to consider the term "fees waived" as similar to the terms "free" or "no cost." Many FRB commenters opposed the proposed comment. They stated that the term "fees waived" necessarily implies the existence of charges, and thus is distinguishable from the terms "free" or "no cost." These FRB commenters believed consumers would be unnecessarily disadvantaged if advertising fee waivers were restricted as proposed. Others believed most consumers would not distinguish between the terms and that advertising accounts with "waived fees" raised the concerns of Congress had in mind when prohibiting the advertisement of accounts as free or no-cost or "words of similar meaning." The FRB believes that "fees waived" is a term similar to "free" or "no cost;" thus, comment 8(a)–5 has been retained as proposed. For reasons of uniformity and parity, NCUA has followed the FRB's position.

(b) Permissible Rates

Comment 8(b)–3 provides guidance on advertising account for which institutions offer a number of versions (certificate accounts, for example). The FRB revised its comment for clarity without any intended change in meaning, and the NCUA Board has conformed the comment to do likewise.

(c) When Additional Disclosures are Required

The regulation requires institutions to disclose additional information when the APY is advertised. Comment 8(c)–1 provides examples of account descriptions that do not trigger the additional disclosures. The FRB has eliminated the reference to a bonus of 1% over an institution's current rate for one-year certificates as an example of a trigger term. Based on comments it received and upon further analysis, the FRB believes a reference to an institution's own rates (to which a "bonus" rate or margin will be applied) is not a trigger term if those rates are not readily determinable from the advertisement itself. This position is consistent with the rules regarding trigger terms in advertisements under the FRB's Regulation Z (12 CFR part 226). For these reasons, NCUA has conformed comment 8(c)–1 in this regard. This clarification was also made in response to four commenters' requests.

(c)(2) Time Annual Percentage Yield is offered

Comment 8(c)(2)–2 has been added in to conform to the final Regulation DD commentary. It specifies that an advertisement may refer to the APY as being accurate as of the date of publication, if the date is on the publication itself.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

One commenter requested clarification regarding whether messages on ATM and computer screens would be entitled to this advertising exemption. The regulation states that this exemption is available for broadcast and electronic media, such as radio and television, outdoor media, such as billboards, and telephone response machines. The Board believes that ATM and computer screens are similar to these types of media in many respects. First, ATMs are part of an electronic network, such as radio and television. Second, most ATMs are at locations outside of a credit union branch. Third, only a limited amount of space is available to make a message available to a member. With this reasoning, the Board has determined that ATM screens are subject to the electronic media exemption, and has clarified this in comment 8(e)(1)(i)–1.

(e)(3) Newsletters

A national trade association commenter noted that neither the letter, spirit, nor intent of TISA and part 707 would be violated if credit unions were permitted to make newsletters available to potential members. Since potential members must receive all required account disclosures upon becoming a member and opening an account, potential members could not be harmed by receipt of a member newsletter containing accurate information, but not conforming in every regard to the advertising requirements of part 707. It was also pointed out by the commenter that newsletters have traditionally been used by credit unions as a tool to increase membership, and that it would be difficult, if not impossible, for credit unions to prevent members from sharing newsletters with potential members sharing a common bond. The NCUA Board, which created the newsletter exemption based upon credit union uniqueness, is sympathetic to these additional reasons to expand availability of the newsletters to potential members. however, to do so at this time would require a rule amendment to § 707.8(e)(3)(i), which would be beyond the scope of the initial, proposed rulemaking, and therefore, impermissible under the Administrative Procedures Act. This being the case, the Board has not made any changes to comments 8(e)(3)–1 and 2. The Board will continue to monitor this situation, and if additional Truth in Savings rulemakings are necessary in the future, will consider requesting

comments on a proposed amendment to expand the newsletter exemption to cover potential member distribution. Similarly, another commenter asked that the Board include information provided on an ATM screen under the newsletter exemption. As the FRB has clearly included ATM screen messages as covered advertisements in the definition of "advertisement," and NCUA must be substantially similar to the FRB, NCUA declines to make this change, which also is outside of the scope of this rulemaking. However, the Board has stated that ATM and computer screen messages may use the electronic media exemption. Comment (e)(1)(i)–1.

Appendix A—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In response to commenters, NCUA has revised comments app.A.I.–2 and 3. Comment app.A.I.–2 adds that, for leap year annual percentage yield calculations, the "days in term" figure used in the denominator should be consistent with the length of term used in the dividends calculation. Comment app.A.I.–3 clarifies that the guidance on the first tier of a tiered-rate account only applies when such information is provided in a rate table format, and not in the written format of sample clauses provided at Appendix B, § B–1(a)(iv).

In response to another commenter, NCUA added comment app.A.I.–4, which provides that term share club accounts may calculate the annual percentage yield based on the maximum number of days in the term, not to exceed the number of days in the year.

Part II. Annual Percentage Yield Earned for Statements

Comment app.A.II.–1 has been clarified without any change in meaning. Proposed comment app.A.II.–2, requiring the provision of certain collected balance information on the periodic statement, has been deleted since it is not in conformity with the FRB's position in Regulation DD and no uniqueness reasons exist for its existence. As a result, proposed comment app.A.II.–3 has been renumbered comment app.A.II.–2.

A. General formula. Comment app.A.II.A.–1 provides guidance about the treatment of accrued, but uncredited, interest in the balances used to calculate the APYE. The FRB believes an inaccurate APYE would result if institutions include accrued interest in the balance figure when statements are sent less frequently than interest is credited. But when periodic statements are issued more frequently than interest is credited, accrued interest must be included in the balance figure for APYE computation purposes. The NCUA adopts the Regulation DD position.

B. Special formula for use where periodic statements are sent more often than the period for which dividends are compounded. Comment app.A.II.B.–1 has been adopted as proposed. Credit unions may use the special formula to calculate an APYE on a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. FRB commenters supported this rule as significantly reducing compliance burdens for institutions. For the same reasons, NCUA adopts the Regulation DD position.

Comment app.A.II.B.–2 clarifies that the special formula requires institutions to use the actual number of days in the compounding period in calculating the APYE. The FRB believes using the actual number of days in a compounding period is necessary to produce an accurate APYE for a specific consumer's account. For reasons of conformity and parity, NCUA has also adopted the Regulation DD position.

Appendix B—Model Clauses and Sample Forms

Comments to Appendix B have been adopted as proposed. Several commenters requested changes in the Appendix B forms and sample clauses. However, as these changes were beyond the scope of this rulemaking, the Board could not consider them at this time. The Board will consider inviting comment upon the Appendix B forms and clauses at some future date.

Paperwork Reduction Act

Office of Management and Budget approval under the Paperwork Reduction Act for part 707 was received on September 29, 1994 as OMB No. 3133–0134.

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 707 as follows:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 would continue to read as follows:

Authority: 12 U.S.C. 4311.

2. Section 707.2 is amended by revising paragraphs (a) and (q) to read as follows:

§ 707.2 Definitions.

* * * * *

(a) *Account* means a share or deposit account at a credit union held by or offered to a member or potential member. It includes, but is not limited to, accounts such as share, share draft, checking and term share accounts. For purposes of the advertising regulations in § 707.8, the term also includes an account at a credit union that is held by or offered by a share or deposit broker.

* * * * *

(q) *Member* means:

(1) A natural person member of the credit union who holds an account primarily for personal, family, or household purposes;

(2) A natural person nonmember who holds an account primarily for personal, family, or household purposes, either jointly with a natural person member or in a credit union designated as a low-income credit union, or to whom such an account is offered; and

(3) A natural person nonmember who holds a deposit account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered.

The term does not include a natural person who holds an account for another in a professional capacity or an unincorporated nonbusiness association of natural person members.

* * * * *

3. Section 707.6 is amended by revising paragraph (b)(3) to read as follows:

§ 707.6 Statement disclosures.

* * * * *

(b) * * *

(3) Fees imposed. Fees required to be disclosed under § 707.4(b)(4) of this part and imposed on the account during the statement period. The fees shall be itemized by type and dollar amounts.

* * * * *

4. Part 707 is amended by adding a new Appendix C to Part 707 to read as follows:

Appendix C to Part 707—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the means by which the staff of the Office of General Counsel of the National Credit Union Administration issues official staff interpretations of Part 707 of the NCUA Rules and Regulations. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act (TISA), 12 U.S.C. 4311.

Section 707.1—Authority, Purpose, Coverage, and Effect on State Laws

(c) Coverage

1. *Foreign applicability.* Part 707 applies to all credit unions that offer share and deposit accounts to residents (including resident aliens) of any state as defined in § 707.2(v) and that offer accounts insurable by the National Credit Union Share Insurance Fund (NCUSIF) whether or not such accounts are insured by the NCUSIF. Corporate credit unions designated as such by NCUA under 12 CFR 704.2 (definition of "corporate credit union") are exempt from part 707.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. This includes agent and agented accounts, such as a member who subdivides interests in a jumbo term share certificate account for sale to other parties or among members who form a certificate account investment club. For example, if an agent places an advertisement that offers members an interest in an account at a credit union, the advertising rules apply to the advertisement, whether the account is held by the agent or directly by the member.

(d) Effect on State Laws

1. *Preemption of state laws/Inconsistent requirements.* State law requirements that are inconsistent with the requirements of TISA and part 707 are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a credit union to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating dividends or interest on an account different from that required in the federal law.

2. *Preemption determinations.* A credit union, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination should be addressed to NCUA's Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314. Written preemption requests should cite (or include a copy of) the allegedly inconsistent state law, demonstrate the inconsistency with TISA and part 707 and the burden on credit unions, and formally request a preemption determination. The Office of General Counsel may provide other interested parties, particularly affected states, an informal opportunity to comment on any request for a preemption determination, unless it finds that such notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest. NCUA will publicize any preemption determinations using any means readily at its disposal.

3. *Effect of preemption determinations.* After the Board, through its Office of General Counsel, determines that a state law is inconsistent, a credit union may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

4. *Reversal of determination.* The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law.

Section 707.2—Definitions

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

i. Dividend-bearing and interest-bearing accounts.

ii. Non-dividend-bearing and non-interest-bearing accounts.

iii. Accounts opened as a condition of obtaining a credit card.

iv. Escrow accounts with a consumer purpose, such as an account established by a member to escrow rental payments, pending resolution of a dispute with the member's landlord.

v. Accounts held by a parent or custodian for a minor under a state's Uniform Gift to Minors Act (or Uniform Transfers to Minors Act).

vi. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts.

vii. Payable-on-Death (POD) or "Totten trust" accounts.

2. *Other accounts.* Examples of accounts *not* subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums.

ii. Accounts established to make periodic disbursements on construction loans.

iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a "Totten trust," or an IRA or SEP account).

iv. Accounts opened by an executor in the name of decedent's estate.

v. Accounts of individuals operating businesses as sole proprietors.

vi. Certificates of indebtedness. Some credit unions borrow funds from their members through a certificate of indebtedness that sets forth the terms and conditions of the repayment of the borrowing, such as federal credit unions do through 12 CFR 701.38. Such an account does not represent an account in a credit union and is not covered by part 707.

vii. Unincorporated nonbusiness association accounts.

3. *Other investments.* The term "account" does not apply to these products. Examples of products not covered are:

i. Government securities.

ii. Mutual funds.

iii. Annuities.

iv. Securities or obligations of a credit union.

v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances.

vi. Purchases of U.S. Savings Bonds through a credit union.

vii. Services offered through a group purchasing plan or a credit union service organization (CUSO).

4. *Options.* All dividend-bearing and interest-bearing accounts are either fixed-rate or variable-rate accounts.

5. *Use of synonyms.* Generally, it is not the purpose of part 707 to prohibit specific descriptive terms for accounts. For example, credit unions can use adjectives and trade names to describe accounts such as "Best Share Draft Account," or "Ultra Money Market Share Account." Synonyms for share, share draft, money market share, and term share accounts may be used to describe various types of credit union share and deposit accounts as long as the synonym is accurate and not misleading. For example, the following synonyms may be used:

i. The term "checking account" may be used to describe share draft accounts.

ii. The term "money market account" may be used to describe money market share accounts.

iii. The term "savings account" may be used to describe regular share and share accounts.

iv. The terms "share certificate," "certificate account," or "certificate" may be used to describe share certificates and other dividend-bearing term share accounts.

v. However, under no circumstances may a credit union describe a share account as a deposit account, or vice versa. For example, the term "certificate of deposit" or "CD" may not be used to describe share certificates and other dividend-bearing term share accounts. Similarly, the terms "time account" (used in Regulation DD, 12 CFR 230.2(u)) and "time deposit" (used in Regulation D, 12 CFR 204.2(c)) may not be used to describe term share accounts.

(b) Advertisement

1. *Covered messages.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to members and potential members the availability of member accounts such as:

i. Telephone solicitations.

ii. Messages on automated teller machine (ATM) screens (including any printout).

iii. Messages on a computer screen in a credit union's lobby (including any printout) other than a screen viewed solely by the credit union's employee.

iv. Messages in a newspaper, magazine, or promotional flyer or on radio or television.

v. Messages promoting an account that are provided along with information about the member's existing account at a credit union and that promote another account at the credit union (such as account promotional messages on the periodic statement).

2. *Other messages.* Examples of messages that are *not* advertisements are:

i. Rate sheets published in newspapers, periodicals, or trade journals (unless the credit union or share and deposit broker that offers accounts at the credit union pays a fee to have the information included or otherwise controls publication).

ii. Telephone conversations initiated by a member or potential member about an account.

iii. An in-person discussion with a member about the terms for a specific account.

iv. Information provided to members about their existing accounts, such as on IRA disbursements, notices for automatically renewable term share accounts sent before renewal, or current rates recorded on a voice response machine.

(c) Annual Percentage Yield.

1. *General.* The annual percentage yield (APY) is required for disclosures for new accounts, oral responses to inquiries about rates; disclosures provided upon request; initial disclosures (if the credit union chooses to provide full disclosures instead of the abbreviated notice); notices prior to the renewal of a term share account, if known at the time the notice is sent, and in advertising. The annual percentage yield shows the total amount of dividends for a 365 day period (or a 366 day period for a leap year) on an assumed principal amount based on the dividend rate and frequency of compounding as a percentage of the assumed principal (for accounts such as share or share draft accounts) or for the total amount of dividends over the term of the account for term share accounts. The annual percentage yield assumes the principal amount remains in the account for 365 days (366 days for leap year) or for the term of the account.

2. *How Annual Percentage Yield Differs from Annual Percentage Yield Earned.* The annual percentage yield (APY) differs from the annual percentage yield earned (APYE). The annual percentage yield earned is required for periodic statements only. The annual percentage yield earned shows the total amount of dividends earned for the dividend or statement period as a percent of the actual average daily balance in the member's account. Unlike the annual percentage yield, the annual percentage yield earned is affected by additions and withdrawals during the period. The annual percentage yield and the annual percentage yield earned must be calculated according to the formulas provided in Appendix A to this rule.

(d) Average Daily Balance Method

1. *General.* One of the two required methods (the daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The average daily balance method requires the application of a periodic rate to the average daily balance in the account for the average daily balance calculation period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Board.

1. *General.* The NCUA Board.

(f) Bonus

1. *General.* Bonuses include items of value offered as incentives to members, such as an offer to pay the final installment deposit for a holiday club account if the final installment is over $10. Bonuses do not include the payment of dividends (including extraordinary dividends), the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or other consideration aggregating $10 or less per year.

2. *Examples.* The following are examples of bonuses.

i. A credit union offers $25 to potential members for becoming a member and opening an account. The $25 could be provided by check, cash, or direct deposit.

ii. A credit union offers $25 to a member with only a regular share account to open a share draft account. The $25 could be provided by check, cash, or direct deposit.

iii. A credit union offers a portable radio with a value of $20 to members and potential members for opening a share draft account.

iv. A credit union pays the final installment deposit for a holiday club account if over $10.

3. *Examples not comprising bonuses.* The following are examples of items that are *not* bonuses:

i. Discount coupons distributed by credit unions for use at restaurants or stores.

ii. A credit union offers $20 to any member if the member is responsible for encouraging a potential member to open an account. The $20 is not a bonus because the $20 is not paid to the individual opening the account. Any item, including cash, given or offered to a third party (that is not a joint member or joint owner in an account being opened) in exchange for a member or potential member opening (or a member renewing or adding to) an account is not a bonus.

iii. A credit union offers $25 to a member if the member can locate his name in the body of a newsletter.

iv. Life savings benefits. Many credit unions offer life savings benefits to beneficiaries of deceased members. Because the benefit accrues to a third party, such life savings plans offered are not bonuses.

v. A credit union offers to pay annual membership dues in a benevolent organization for a class of members.

4. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Credit unions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimis*. Items required to be reported by the credit union under IRS rules are bonuses under this regulation. Examples of items of *de minimis* values are:

i. Disability insurance premiums on a share account valued at an amount of $10 or less per year.

ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less per year.

5. *Aggregation.* In determining if an item valued at $10 or less is a bonus, credit unions must aggregate per account per calendar year items that may be given to members. In making this determination, credit unions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume a credit union offers in January to give members an item valued at $7 for each calendar quarter during the year that the average account balance in a share draft account exceeds $10,000. The bonus rules are triggered, since members are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to members opening a share draft account during the month of January, even though in November the credit union introduces a new promotion that includes, for example, an offer to existing share draft accountholders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

6. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by members through the waiver or reduction of fees for credit union-related services (even if the fees waived exceed $10), such as the following:

i. Waiving a safe deposit box rental fee for one year for members who open a new account.

ii. Waiving fees for travelers checks for members, and waiving check and share draft printing fees.

iii. Nondiscriminatorily waiving all fees for a particular class of members, such as seniors or minors.

iv. Discounts on interest rates charged for loans at the credit union.

v. Rebates of loan interest already paid by a member.

vi. Discounts on application fees charged for loans at the credit union.

vii. Packaged, linked, or tied-account services.

7. *Non-dividend membership benefits.* Such benefits are not bonuses because they are sporadic in nature, often difficult to value, and providing non-dividend membership benefits is a long-standing unique credit union practice. (See commentary to § 707.2(r) for examples of such benefits.)

(g) Credit Union

1. *General.* Includes credit unions in the United States, Puerto Rico, Guam, U.S. Virgin Islands, and U.S. territories. Applies to credit unions whether or not the accounts in the credit union are federally, state, privately insured, or uninsured.

(h) Daily Balance Method

1. *General.* One of the two required methods (the average daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The daily balance method requires the application of a daily periodic rate to the full amount of principal in the account each day.

(i) Dividend and Dividends

1. *General.* Member savings placed in share accounts are equity investments, and the returns earned on these accounts are dividends. Federal credit unions may only offer dividend-bearing and non-dividend-bearing share accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are dividends. Dividends exclude the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits and extraordinary dividends. Dividend-bearing accounts must be either fixed-rate or variable-rate accounts.

2. *Procedure.* Credit unions must follow appropriate law (state law for state-chartered credit unions and federal law for federal credit unions) in determining dividend policies and declaring dividends. Generally, dividends may be viewed as a portion of the available account and undivided earnings of the credit union which is set apart, after

required transfer to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are usually not entitled to dividends until the following steps are completed: (1) The board of the credit union develops a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account; (2) the provisions for required transfers to reserves are made; (3) sufficient and available prior and/or current earnings are available at the end of the dividend period; (4) the board formally makes a dividend declaration in accordance with the credit union's dividend policy; and (5) dividends must be paid to members by a credit to the appropriate share account, payment by check or share draft, or by a combination of the two methods.

3. *When available.* Credit unions must follow the law of their primary chartering authority to determine when dividends are available. Generally, it is the declaration of the dividend itself which creates the dividend and the member has no right to receive a dividend until it is so declared. The decision of when to declare dividends lies within the official discretion of each credit union's board of directors and cannot be abrogated by contract. An agreement to pay dividends on a share account is generally interpreted not as an obligation to pay the stipulated dividends absolutely and unconditionally, but as an undertaking to pay them out of the earnings when sufficiently accumulated from which dividends in general are properly payable. Generally, "prospective rates" are rates set in good faith in advance of the close of a dividend period, that may be altered if sufficient funds are not available, or in the event of a superseding event, such as a strike, plant closure, significant fluctuation in market rates and/or a significant change in financial structure, natural disaster or emergency that alters the assumptions under which the "prospective rates" were made. It is the intent of TISA that all disclosure be accurate when made, and credit unions are urged to make every effort to ratify disclosed "prospective rates." "Prospective rates" may also be referred to as "projected rates" or similar wording, but not as "estimated rates." (See comment 3(b)–2, prohibiting use of estimates).

4. *Sample dividend resolutions.* (i) The following resolution may be used where the dividend rates are set after the close of a dividend period.

Resolution of Board of Directors for the Declaration of Dividends

A. I, _____, certify that I am Secretary of _____ Credit Union Board of Directors, and that the following is a correct copy of the resolution for declaring dividend adopted by the _____ Credit Union at a meeting of the Board of Directors duly and properly held on _____, 19_____. This resolution appears in the minutes of this meeting and has not been rescinded or modified.

B. Resolved, that

(1) The Board of Directors has developed a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account;

(2) The required transfers to reserves have been made; and

(3) Sufficient and available prior and/or current earnings are available at the end of this dividend period.

C. Resolved, further, that the Board of Directors now formally makes a dividend declaration in accordance with the Credit Union's dividend policy and authorizes that on _____, 19_____, dividends must be paid to members by a credit to the appropriate share account, payment by share draft or by a combination of the two methods.

D. I further certify that the Board of Directors of this Credit Union has, and the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolutions and that this resolution revokes any prior resolution.

In witness whereof, this is my signature and the date on which I signed this Resolution.

_____

Signature

_____

Date

[Attach list of accounts with dividend rates for each type of account.]

(ii) The following resolution may be used where the dividend rates are set before the close of a dividend period.

Resolution of Board of Directors for the Declaration of Dividends

A. I, _____, certify that I am the Secretary of _____ Credit Union, and that the following is a correct copy of the resolution for declaring dividends adopted by the _____ Credit Union at a meeting of the Board of Directors duly and properly held on _____, 19_____. This resolution appears in the minutes of that meeting and has not been rescinded or modified.

B. Resolved, that the Board of Directors has adopted a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable) and the method of dividend computation for each type of share account.

C. Resolved, that it is the policy and practice of the Board of Directors to meet periodically to establish prospective dividend rates for each type of dividend-bearing share account.

D. Resolved, that if the required transfers to reserves have been made and there are sufficient and available prior and/or current earnings available at the end of a dividend period, the officers of the Credit Union are authorized to pay dividends at the rate prospectively established by the Board of Directors for each account for the dividend period. The officers may pay the dividends without any further action of the Board of Directors. The act of paying the dividends shall constitute the declaration of the dividends and shall be a ratification of the prospective dividend rate.

In witness whereof, this is my signature and the date on which I signed this Resolution.

_____

Signature

_____

Date

[Attach list of accounts with prospective dividend rates for each type of account.]

5. *Referencing.* Except where specifically stated otherwise, use of the term "share" in part 707, as in "share account," also refers to "deposit," as in "deposit account," where appropriate (for interest-bearing or non-interest-bearing deposit accounts at some state-chartered credit unions).

(j) Dividend Declaration Date

1. *General.* The importance of the dividend declaration date is to tie the last paid dividend to a certain period of time to place members and potential members on notice that the last paid dividend is different from the next dividend to be paid. In order to achieve this purpose, a credit union may use any of the following methods:

i. "As of 3/15/95" (the date the board of directors last met and declared the last paid dividend).

ii. "As of 3/31/95" (the last day of the last dividend period upon which a dividend has been paid).

iii. "For the period 1/1/95 to 3/31/95" (the last dividend period upon which a dividend has been paid).

iv. "For the first quarter of 1995" (the last dividend period upon which a dividend has been paid).

v. "For April 1995" (the last dividend period upon which a dividend has been paid).

(k) Dividend Period

1. *General.* The dividend period is to be set by a credit union's board of directors for each account type, e.g., regular share, share draft, money market share, and term share. The most common dividend periods are weekly, monthly, quarterly, semi-annually, and annually. Dividend periods need not agree with calendar months, e.g., a monthly dividend period could begin March 15 and end April 14.

(l) Dividend Rate

1. *General.* The dividend rate does not reflect compounding. Compounding is reflected in the "annual percentage yield" definition.

2. *Referencing.* Except where specifically stated otherwise, use of the term "dividend rate" in part 707 also refers to "interest rate," where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(m) Extraordinary Dividends

1. *General.* The definition encompasses all irregularly scheduled and declared dividends, and as dividends, extraordinary dividends are exempt from the "bonus" disclosure requirements. Extraordinary dividends do not have to be disclosed on account disclosures, but the dollar amount of an extraordinary dividend credited to the account during the statement period does

have to be separately disclosed on the periodic statement for the dividend period during which the extraordinary dividends are earned. Extraordinary dividends, like ordinary dividends, do not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses or non-dividend membership benefits. See comments 2(f) 1 through 7 and 2(i) 1 through 4. Extraordinary dividends may be calculated by any means determined by the board of directors of a credit union and may not be used in the annual percentage yield earned calculation.

2. *Use of synonym.* Extraordinary dividends may be described as "bonus dividends."

(n) Fixed-Rate Account

1. *General.* Includes all accounts in which the credit union, by contract, agrees to give at least 30 days advance written notice of decreases in the dividend rate. Thus, credit unions can decrease rates only after providing advance written notice of rate decreases, *e.g.*, a "change-in-terms notice."

(o) Grace Period

1. *General.* A period after maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty. Use of a "grace period" is discretionary, not mandatory. This definition does not refer to the "grace period" account, which is a synonym for "federal rollback method" or "in by the 10th" accounts, which are prohibited by TISA and part 707.

(p) Interest

1. *General.* Member savings placed in deposit accounts are debt investments, and the return earned on these accounts is interest. Federal credit unions are not authorized to offer any interest-bearing deposit accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are interest. Interest excludes the payment of a bonus or other consideration worth $10 or less given during a year, the waiver of reduction of a fee, the absorption of expenses, non-dividend membership benefits, and extraordinary dividends.

2. *Differences between dividends and interest.* Generally, dividends are returns on an equity investment (shares); interest is return on a debt investment (deposits). Dividends, in general, are not properly payable until declared at the close of a dividend period; interest, in general, is properly payable daily according to the deposit contract. Dividend rates are prospective until actually declared; interest rates are set according to contract in advance and are earned on that basis. Share accounts establish a member (owner)/credit union (cooperative) relationship; deposit accounts establish a depositor (creditor)/depository (debtor) relationship.

3. *Referencing.* Except where specifically stated otherwise, use of the terms "dividend" or "dividends" in part 707 also refers to "interest" where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(q) Member

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

i. Attorney-client trust accounts.

ii. Trust, estate and court-ordered accounts.

iii. Landlord-tenant security accounts.

2. *Other accounts.* Examples of accounts *not* held in a professional capacity include accounts held by parents for a child under the Uniform Gifts to Minors Act (or Uniform Transfers to Minors Act.

3. *Retirement plans.* IRAs and SEP accounts are member accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

(r) Non-Dividend Membership Benefits

1. *General.* Term reflects unique credit union practices that are difficult to value, encourage community spirit, and are not granted in such quantity as to be includable as calculable dividends.

2. *Examples.* Examples include:

i Food, refreshments, and drawings and raffles at annual meetings, member functions, and branch openings.

ii. Travel club benefits.

iii. Prizes offered at annual meetings, such as U.S. Savings Bonds, a deposit of funds into the winner's account, trips, and other gifts. Such prizes are not bonuses because they are offered as an incentive to increase attendance at the annual meeting, and not to entice members to open, maintain, or renew accounts or increase an account balance.

iv. Life savings benefits.

(s) Passbook Account

1. *Relation to Regulation E.* Passbook accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR § 205.2(j)), such as an account credited by direct share and deposit of social security payments. Accounts that permit access by other electronic means are not "passbook accounts," and any statements that are sent four or more times a year must comply with the requirements of § 707.6.

(t) Periodic Statement

1. *General.* Periodic statements are not required by part 707. Passbook and term share accounts are exempt from periodic statement requirements.

2. *Examples.* Periodic statements do not include:

i. Additional statements provided solely upon request.

ii. Information provided by computer through home electronic credit union account services.

iii. General service information such as a quarterly newsletter or other correspondence that describes available services and products.

(u) Potential Member

1. *General.* A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to become a member. The term also includes natural person nonmembers eligible to hold accounts in a credit union pursuant to relevant federal or state law.

2. *Verification of eligibility.* It is recommended that credit unions have sound written procedures in place to identify those eligible for membership. If these procedures include verification measures, such as an application process, verification telephone call or letter to an employer or association within the field of membership, witnessing by an existing member, or similar procedure, then the credit union may first verify the membership eligibility of a potential member before providing account disclosures or other information to the potential member. This process of verifying a member's eligibility status, making a recommendation for membership, and providing account disclosures should be completed within 20 calendar days. This period also applies when potential members not on credit union premises request disclosures.

3. *Nonmembers.* Within its sole discretion, the board of directors of a credit union may provide TISA disclosures to nonmembers who are ineligible for membership or to hold an account at the credit union. If disclosures are made to such nonmembers, it is the position of the Board that no civil liability can accrue to the credit union for any errors in such disclosures. (See commentary to § 707.3(d)).

(v) State

1. *General.* Territories and possessions include American Samoa, Guam, the Mariana Islands, and the Marshall Islands.

(w) Stepped-Rate Account

1. *General.* Stepped-rate accounts are those accounts in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods.

2. *Example.* An example of a stepped-rate account is a one-year term share certificate account in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

(x) Term Share Account

1. *Relation to Regulation D.* Regulation D permits, in limited circumstances, the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR 204.2(c)(1)(i).) But the fact that a member makes a withdrawal as permitted by Regulation D does not disqualify the account from being a term share account for purposes of this regulation (such as withdrawals upon the death of the member, or within a "grace period" for automatically renewable term share accounts).

2. *Club accounts.* Club accounts, including Christmas club, holiday club, and vacation club accounts may be either term share or regular share accounts, depending on the terms of the account. Although club accounts typically have a maturity date, they are not

term share accounts unless they also require a penalty of at least seven days' dividends for withdrawals during the first six days after the account is opened.

(v) Tiered-Rate Account

1. *General.* Tiered-rate accounts are those accounts in which two or more dividend rates are paid on the account and are determined by reference to a specified balance level. Tiered-rate accounts are of two types: Tiering Method A and Tiering Method B. In Tiering Method A accounts, the credit union pays the applicable tiered dividends rate on the entire amount in the account. This method is also known as the "hybrid" or "plateau" tiered-rate account. In Tiering Method B accounts, the credit union does not pay the applicable tiered dividends rate on the entire amount in the account, but only on the portion of the share account balance that falls within each specified tier. This method is also known as the "pure" or "split-rate" tiered-rate account. (See commentary to Appendix A, § I, D.)

2. *Example.* An example of a tiered-rate account is one in which a credit union pays a 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above.

3. *Term share accounts.* Term share accounts that pay different rates based solely on the amount of the initial share and deposit are not tiered-rate accounts.

4. *Minimum balance accounts.* A requirement to maintain a minimum balance to earn dividends does not make an account a tiered-rate account. If dividends are not paid on amounts below a specified balance level, then the account has a minimum balance requirement (required to be disclosed under § 707.4(b)(3)(i)), but the account does not constitute a tiered-rate account. A zero rate (0%) cannot constitute a tier. Minimum balance accounts are single rate accounts with a minimum balance requirement.

(z) Variable-Rate Account

1. *General.* Includes accounts in which the credit union does not contract to give at least 30 days advance written notice of decreases in the dividend rate. An account meets this definition whether the rate change is determined by reference to an index, by use of a formula, or merely at the discretion of the credit union's board of directors. An account that permits one or more rate adjustments prior to maturity at the member's option, such as a rate relock option, is a variable-rate account.

2. *Differences between fixed-rate and variable-rate accounts.* All ccounts must either be fixed-rate or variable-rate accounts. Classifying an account as variable-rate affects credit unions three ways:

i. Additional account disclosures are required (§ 707.4(b)(1)(ii));

ii. Rate decreases are exempted from change-in-terms requirements (§ 707.5(a)(2)(i)); and

iii. Advertising notice required (§ 707.8(c)(1)).

Fixed-rate accounts require a contract term obligating the credit union to a 30-day advance, written notice to members before decreasing the dividend rate on the account. Term changes adversely affecting the member and rate decreases cannot take effect until 30 days after such fixed-rate change-in-terms notices are mailed or delivered to members (§ 707.5(a)).

Section 707.3—General Disclosure Requirements

(a) Form

1. *General.* Alal required disclosures (e.g., account disclosures, change-in-terms notices, term share renewal/maturity notices, statement disclosures and advertising disclosures) must be made clearly and conspicuously, in a form the member may retain. Disclosures need be made only as applicable (e.g., disclosures for a non-dividend-bearing account would not include disclosure of annual percentage yield, dividend rate, or other disclosures pertaining to dividend calculations).

2. *Design requirements.* Disclosures must be presented in a format that allows members and potential members to readily understand the terms of their account. Credit unions are not required to use a particular type size or typeface, nor are credit unions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order.

ii. In combination with other disclosures or account terms.

iii. In combination with disclosures for other types of accounts, as long as it is clear to members and potential members which disclosures apply to their account.

iv. On more than one page and on the front and reverse sides.

v. By using inserts to a document or filling in blanks.

vi. On more than one document, as long as the documents are provided at the same time.

3. *Consistent terminology.* A credit union must use the same terminology to describe terms or features that are required to be disclosed. For example, if a credit union describes a monthly fee (regardless of account activity), as a "monthly service fee" in account opening disclosures, the periodic statements and change-in-terms notices must use the same terminology so that members and potential members can readily identify the fee.

(b) General

1. *Terms and conditions.* Credit unions are required to have disclosures reflect the terms of the legal obligation between the credit union and a member at the time the member opens the account. This provision does not impose any contract terms or supersede state or other laws that define how the legal obligations between a credit union and its membership are determined.

2. *Specificity of legal obligation.* Credit unions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a "month." Use of estimates is prohibited in TISA disclosures.

3. *Foreign language.* Disclosures may be made in any foreign language, if desired by the board of directors of a credit union. However, disclosures must also be provided in English, upon request.

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

i. A credit union changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E for sending change-in-terms notices.

ii. A member adds an ATM access feature to an account, and the credit union provides disclosures pursuant to Regulation E, including disclosure of fees before the member receives ATM access. (See 12 CFR 205.7.)

iii. A credit union complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation, but not by Regulation E.

iv. A credit union relies on Regulation E's rules regarding disclosures of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of "intra-institutional transfers" to or from the member's other accounts at the credit union during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(d) Multiple Members

1. *General.* When an account has multiple natural person member accountholders, delivery of disclosures to any member accountholder or agent authorized by the accountholder satisfies the disclosure requirements of part 707.

(e) Oral Response to Inquiries

1. *Application of rule.* Credit unions need not provide rate information orally. Disclosures need be made only as appropriate. For example, the requirement to give a telephone number for a member to call about rates for interest-bearing accounts and dividend-bearing term share accounts, would not be necessary for members calling the credit union for information. Also, the disclosure reqirements are applicable only to credit union employees and volunteers acting the in ordinary course of credit union business.

2. *Relation to advertising.* The advertising rules do not cover an oral response to a question about rates.

3. *Existing accounts.* This paragraph does not apply to oral responses about rate information for existing term share accounts or accounts not currently offered. For example, if a member holding a one-year term share account requests dividend rate information about the account during the term, the credit union need not disclose the annual percentage yield, unless the member is calling for rate information under a maturity notice.

(f) Rounding and Accuracy Rules for Rates and Yields

(f)(1) Rounding

1. *Permissible rounding.* The annual percentage yield, annual percentage yield earned and dividend rate must be rounded to

the nearest one-hundredth of one percentage point (.01%) when disclosed. Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. For account disclosures, the dividend rate may be expressed to more than two decimal places.

(f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Credit unions may not purposely incorporate the one-twentieth of one percentage point (.05%) tolerance into their calculation of yields.

2. *Dividend rate.* There is no tolerance for an inaccuracy in the dividend rate.

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

1. *New accounts.* New account disclosures must be provided when:

i. A term share account that does not automatically rollover is renewed by a member.

ii. A member changes the term for a renewable term share account (from a one-year term share account to a six-month term share account, for instance) (see comment 5(b)–5 regarding disclosure alternatives).

iii. A credit union transfers funds from an account to open a new account not at the member's request, unless the credit union previously gave account disclosures and any change-in-terms notices for the new account (e.g., funds in a money market share account are transferred by a credit union to open a new account for the member, such as a share draft account, because the member exceeded transaction limitations on the money market share account).

iv. A credit union accepts a deposit from a member to an account that the credit union had previously deemed to be "closed," under applicable federal or state law, for the purpose of treating accrued, but uncredited, dividends as forfeited dividends. New account numbers are not required by this requirement.

2. *Acquired accounts.* New account disclosures need not be given when a credit union acquires an account through an acquisition of, or merger with, another credit union (but see § 707.5(a) regarding advance notice requirements if terms are changed).

3. *Combination disclosures.* New account disclosures need not be given when a member has already received disclosures covering several accounts, and opens a new account properly disclosed by the already received combination disclosures, if the new account is opened within a reasonable amount of time after receipt of the combination disclosures and if the received disclosures and terms are accurate at the time the new account is opened.

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. But, when a member asks for written information about an account (whether by telephone, in person, or by other means), the credit union must provide disclosures unless the account is no longer offered to the public.

2. *General requests.* When member's or potential member's request disclosures about a type of account (a share draft account, for example), a credit union that offers several variations may provide disclosures for any one of them. No disclosures need be made to nonmembers, though a credit union may provide disclosures to nonmembers within its sole discretion.

3. *Timing for response.* Twenty calendar days is a reasonable time for responding to a request for account information that a member does not make in person.

(a)(2)(ii)(A)(2)

1. *Recent rates.* Credit unions comply with this paragraph if they disclose an interest rate (or dividend rate on a dividend-bearing term share account) and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a term share account as "1 year" or "6 months," for example, illustrates a response stating the maturity of a term share account as a term rather than a date (e.g., "June 1, 1995").

(b) Content of Account Disclosures

(b)(1) Rate Information

(b)(1)(i) Annual Percentage Yield and Dividend Rate

1. *Rate disclosures.* In addition to the dividend rate and annual percentage yield, credit unions may disclose a periodic rate corresponding to the dividend rate. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the dividend rate, credit unions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* For fixed-rate term share accounts paying the opening rate until maturity, credit unions may disclose the period of time the dividend rate will be in effect by stating, or cross-referencing, the maturity date. For other fixed-rate accounts, credit unions may use a date (such as "This rate will be in effect through June 30, 1995") or a period (such as "This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each dividend rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The dividend rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

5. *Minimum balance accounts.* If a credit union sets a minimum balance to earn dividends, the credit union may, but need not, state that the annual percentage yield is 0% for those days the balance in the account drops below the minimum balance level when using the daily balance method. Nor is a disclosure of 0% required for credit unions using the average daily balance method, if the member fails to meet the minimum balance required for the average daily balance period.

(b)(1)(ii) Variable Rates

(b)(1)(ii)(B)

1. *Determining dividend rates.* To disclose how the dividend rate is determined, credit unions must:

i. Identify the index and specific margin, if the dividend rate is tied to an index.

ii. State that rate changes are within the credit union's discretion, if the credit union does not tie changes to an index.

(b)(1)(ii)(C)

1. *Frequency of rate changes.* A credit union reserving the right to change rates at its discretion must state the fact that rates may change at any time.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Credit unions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

1. *General.* Descriptions such as "quarterly" or "monthly" are sufficient. Irregular crediting and compounding periods, such as if a cycle is out short at year end for tax reporting purposes, need not be disclosed.

2. *Dividend period.* For dividend-bearing accounts, the dividend period must be disclosed. (A specific example must also be given, see Appendix B, § B–1(c).) The dividend period for term share accounts generally may be disclosed as the account's term (e.g., two years).

(b)(2)(ii) Effect of Closing an Account

1. *Deeming an account closed.* A credit union may, subject to state or other law, provide in account contracts the actions by members that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited dividends. An example is the withdrawal of all funds from the account prior to the date dividends are credited. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished if funds remain in a member's account. *NCUA Standard FCU Bylaws*, Art.

III, § 3 (members have at least 6 months to replenish membership share before membership terminates and account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.

(b)(3) Balance Information

(b)(3)(i) Minimum Balance Requirements

1. *Par value.* Credit unions must disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. Since members cannot generally maintain any accounts until the par value of the membership share is paid in full, this section requires that credit unions disclose the par value of a share necessary to become a member and maintain accounts at the credit union. The par value of a share and the minimum balance requirement do not have to be the same amount (e.g., a credit union may have a $5 par value for a membership share, in order for accounts to be opened and maintained, and a $100 minimum balance requirement, in order for the account to earn dividends).

2. *Disclosures.* The explanation of minimum balance computation methods may be combined with the balance computation method disclosures (§ 707.4(b)(3)(ii)) if they are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends, the credit union must disclose the specific cycle or time period used for each purpose (e.g., use of a midmonth statement cycle for determining dividends, and use of a calendar month cycle for determining fees). Credit unions may assess fees by using any method. If fees on one account are tied to the balance in another account, such provision must be explained (e.g., if share draft fees are tied to a minimum balance in the regular share account (or a combination of the share draft and regular share accounts), the share draft account must explain that fact and how the balance in the regular share account (or both accounts) is determined). The fee need not be disclosed in the account disclosures if the fee is not imposed on that account.

(b)(3)(ii) Balance Computation Method

1. *Methods and periods.* Credit unions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (the daily balance for a calendar month, for example) and accruing dividends (the average daily balance for a statement period, for example). Each method and corresponding period must be disclosed.

(b)(3)(iii) When dividends begin to accrue

1. *Additional information.* Credit unions must include a statement as to when dividends begin to accrue for noncash deposits. Credit unions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when dividends begin to accrue. Under the ledger balance method, dividends begin to accrue on the day of deposit. Under the collected balance methods, dividends begin to accrue when provisional credit is received for the item deposited.

(b)(4) Fees

1. *Types of fees.* Fees related to the routine use of an account must be disclosed. The following are types of fees that must be disclosed in connection with an account:

i. Maintenance fees, such as monthly service fees.

ii. Fees related to share deposits or withdrawals.

iii. Fees for special services, such as stop payment fees, fees for balance inquiries or verification of share and deposits, fees associated with checks returned unpaid, fees for regularly sending to members share drafts that otherwise would be held by the credit union, and overdraft line of credit access fees (if charged against the share account).

iv. Fees to open or to close an account.

v. Fees imposed upon dormant or inactive accounts.

2. *Other fees.* Credit unions need not disclose fees such as the following:

i. Fees for services offered to members and nonmembers alike, such as fees for certain travelers checks, for wire transfers and automated clearinghouse (ACH) transfers, to process credit card cash advances, or to handle U.S. Savings Bond Redemption (even if different amounts are charged to members and nonmembers).

ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, to change names on an account, to generate a midcycle periodic statement, to wrap loose coins, for photocopying forms, for statements returned to the credit union because of a wrong address, and locator fees.

2. *Amount of fees.* Credit unions are cautioned that merely providing fee information in an account disclosure may not be sufficient to gain the legal right to impose the fee involved under applicable law. Credit unions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

i. "$4.00 monthly service fee".

ii. $7.00 and up" or "fee depends on style of checks ordered" for check printing fees.

3. *Tied-accounts.* Credit unions must state if fees that may be assessed against an account are tied to other accounts at the credit union. For example, if a credit union ties the fees payable on a share draft account to balances held in the share draft account and in a regular share account, the share draft account disclosures must state that fact and explain how the fee is determined.

4. *Regulation E statements.* Some fees are required to be disclosed under both Regulation E (12 CFR 205.7) and part 707. If such fees, such as ATM transaction fees, are disclosed on a Regulation E statement, they need not be disclosed again on a periodic statement required under part 707.

(b)(5) Transaction Limitations

1. *General rule.* Examples limitations on the number of dollar amount of share deposits or withdrawals that credit unions must disclose are:

i. Limits on the number of share drafts or checks that may be written on an account for a given time period.

ii. Limits on withdrawals or share deposits during the term of a term share account.

iii. Limitations required by Regulation D, such as the number of withdrawals permitted from money market share accounts by check to third parties each month (credit unions need not disclose reservation of right to require a notice for withdrawals from accounts required by federal or state law).

(b)(6) Features of Term Share Accounts

(b)(6)(i) Time Requirements

1. *"Callable" term share accounts.* In addition to the maturity date, credit unions must state the date or the circumstances under which the credit union may redeem a term share account at the credit union's option (a "callable" term share account).

(b)(6)(ii) Early Withdrawal Penalties

1. *General.* The term "penalty" may, but need not, be used to describe the loss that may be incurred by members for early withdrawal of funds from term share accounts.

2. *Examples.* Examples of early withdrawal penalties are:

i. Monetary penalties, such a specific dollar amount (e.g., "$10.00") or a specific days' worth of dividends (e.g., "seven days' dividends plus accrued but uncredited dividends, but only if the account is closed").

ii. Adverse changes to terms such as the lowering of the dividend rate, annual percentage yield, or reducing the compounding or crediting frequency for funds remaining in shares or on deposit.

iii. Reclamation of bonuses.

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties for purposes of this regulation.

4. *Disclosing penalties.* Penalties may be stated in months, whether credit unions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating "one month's dividends" is permissible, whether the credit union assesses 30 days' dividends during the month of April, or selects a time period between 28 and 31 days for calculating the dividends for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal Policies

1. *Rollover term share accounts.* Credit unions are not required to provide a grace period, to pay dividends during the grace period, or to disclose whether or not dividends will be paid during the grace period. Credit unions offering a grace period on term share accounts must give the length of the grace period. Commentary, Appendix B, Model Clauses, § B–1(i)(iv).

2. *Nonrollover term share accounts.* Credit unions that pay dividends on funds following the maturity of term share accounts that do not renew automatically need not

state the rate (or annual percentage yield) that may be paid.

(b)(7) Bonuses

1. *General.* Credit unions are required to state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, credit unions need not duplicate the disclosure for purposes of this paragraph.

(b)(8) Nature of Dividends

1. *General.* Dividends are not payable until declared and unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining dividends educates members and protects credit unions in the event that a prospective dividend cannot be paid, or is not properly payable. This disclosure is required for all dividend-bearing share accounts. Term share accounts need not include a statement regarding the nature of dividends.

2. *State-chartered credit unions with interest-bearing deposit accounts.* State law controls the nature of accounts (i.e., whether an account is a share account or a deposit account). If a member of a state-chartered credit union is opening only an interest-bearing deposit account, or is requesting account disclosures only for an interest-bearing deposit account (if state law requires the depositor to hold a share account), the disclosures must generally include the following information on any dividend-bearing share portion of the account (e.g., membership share): the par value of a share; a statement that the portion of the deposit that represents the par value of the membership share will earn dividends, and that dividends are paid from current income and available earnings after required transfers to reserves. Further additional disclosures, such as a separate dividend rate and annual percentage yield for the membership share, are not required (if the additional disclosures would agree with the remainder of the account which is invested in an interest-bearing deposit).

(c) Notice to Existing Accountholders

1. *General.* Only members who receive periodic statements (provided regularly at least four times per year) and who hold accounts of the type offered by the credit union as of the compliance date of part 707 (generally January 1, 1995) must receive the notice. If following receipt of the notice members request disclosures, credit unions have twenty calendar days from receipt of the request to provide the disclosures. Rate and annual percentage yield information in such disclosures must conform to that required for disclosures upon request. As an alternative to including the notice in or on the periodic statement, the final rule permits credit unions to send the account disclosures themselves, as long as they are sent at the same time as the periodic statement (the disclosures may be mailed either with the periodic statement or separately).

2. *Form of the notice.* The notice may be included on the periodic statement, in a member newsletter, or on a statement stuffer or other insert, if it is clear and conspicuous. The notice cannot be sent in a separate mailing from the periodic statement.

3. *Timing.* The notice may accompany the first periodic statement after the compliance date for part 707, or the periodic statement for the first cycle beginning after that date. For example, a credit union's statement cycle is December 15, 1994-January 14, 1995. The statement is mailed on January 15. The next cycle is January 15, 1995 through February 14, 1995, and the statement for that cycle is mailed on February 15. The credit union may provide the notice either on or with the January 15 statement or on or with the February 15 statement, as it covers the first cycle after January 1, 1995.

4. *Early compliance.* Credit unions that provide the notice to existing members prior to the compliance date of part 707, must be prepared to provide accurate and timely disclosures when, following receipt of the notice, members ask for account disclosures. Such disclosures must be provided even if they are requested before the compliance date of part 707. Credit unions who provide early notice to existing members need to comply with other aspects of part 707, but need not provide disclosures already provided in compliance with part 707.

Section 707.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice required

1. *Form of notice.* Credit unions may provide a change-in-term notice on or with a regular periodic statement or in another mailing (such as a highlighted portion of a newsletter or statement stuffer insert). If a credit union provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, credit unions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term. Credit unions are cautioned that unless credit unions have reserved the right to change terms in the account agreement or disclosures, a change-in-terms notice may not be sufficient to amend the terms under applicable law.

2. *Effective date.* An example of a language for disclosing the effective date of a change is: "As of May 11, 1995".

3. *Terms that change upon the occurrence of an event.* A credit union offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the credit union fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that member's account at that time).

4. *Examples.* Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for employee-members for whom account maintenance or activity fees were waived during their employment by the credit union.

ii. The expiration of one year in a promotion described in the account opening disclosures to "waive $4.00 monthly service charges for one year".

(a)(2) No Notice Required

(a)(2)(ii) Check Printing Fees

1. *Increase in fees.* A notice is not required for an increase in fees for printing share drafts (or deposit and withdrawal slips) even if the credit union adds some amount to the price charged by the vendor.

(b) Notice Before Maturity for Term Share Accounts Longer Than One Month That Renew Automatically.

1. *Maturity dates on nonbusiness days.* In determining the term of a term share account, credit unions may disregard the fact that the term will be extended beyond the disclosed number of days if the maturity date falls on a nonbusiness day. For example, a holiday or weekend may cause a "one-year" term share account to extend beyond 365 days (or 366, in a leap year), or a "one-month" term share account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as "October 28".

ii. A date that is easily discernible, such as "the Tuesday prior to the maturity date stated on the notice" or "as of the maturity date stated on this notice".

3. *Alternative timing rule.* Under the alternative timing rule, a credit union that offers a 10-day grace period would have to provide the disclosures at least 10 calendar days prior to the scheduled maturity date.

4. *Club accounts.* If members have agreed to the transfer of payments from another account to a club term share account for the next club period, the credit union must comply with the requirements for automatically renewable term share accounts—even though members may withdraw funds from the club account at the end of the current club period.

5. *Renewal of a term share account.* In the case of a change-in-terms that becomes effective if a rollover term share account is subsequently renewed:

i. If the change is initiated by the credit union, the disclosure requirements of this paragraph. (Section 707.5(a) applies if the change becomes effective prior to the maturity of the existing term share account.)

ii. If the change is initiated by the member, the account opening disclosure requirements of § 707.4(b). (If the notice required by this paragraph has been provided, credit unions may give new account disclosures or disclosures that reflect the new term.)

6. *Example.* If a member receives a notice prior to maturity on a one-year term share account and requests a rollover to a six-month account, the credit union must provide either account opening disclosures including the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of Longer Than One Year

1. *Highlighting changed terms.* Credit unions need not highlight terms that have changed since the last account disclosures were provided.

(c) Notice for Term Share Accounts One Month or Less That Renew Automatically

1. *Providing disclosures within a reasonable time.* Generally, 20 calendar days after an account renews is a reasonable time for providing disclosures. For term share accounts shorter than 20 days, disclosures should be given prior to the next scheduled renewal date. For example, if a term share account automatically renews every seven days, disclosures about an account that renews on Wednesday, December 6, 1995, should be given prior to Wednesday, December 13, 1995.

(d) Notice Before Maturity for Term Share Accounts Longer Than One Year That Do not Renew Automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover term share account, credit unions need not provide account disclosures unless a new account is established.

Section 707.6—Periodic Statement Disclosures

(a) Rule When Statement and Crediting Periods Vary

1. *General.* Credit unions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no dividends are earned for a statement period, credit unions need not state that fact. Or, credit unions may disclose "$0" dividends earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When a credit union provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states dividend or rate information. (See 12 CFR 205.9). For credit unions that choose not to treat Regulation E activity statements as part 707 periodic statements, the quarterly periodic statement must reflect the annual percentage yield earned and dividends earned for the full quarter. However, credit unions choosing this option need not redisclose fees already disclosed on an interim Regulation E activity statement on the quarterly periodic statement. For credit unions that choose to treat Regulation E activity statements as part 707 periodic statements, the Regulation E statement must meet all part 707 requirements.

3. *Combined statements.* Credit unions may provide certain information about an account (such as a money market share account or regular share account) on the periodic statement for another account (such as a share draft account) without triggering the disclosures required by this section, as long as:

i. The information is limited to information such as the account number, the type of account, balance information, accountholders' names, and social security or tax identification number; and

ii. The credit union also provides members a periodic statement complying with this section for the account (the money market share account or regular share account, in the example).

4. *Other information.* Additional information that may be given on or with a periodic statement, includes:

i. Dividend rates and corresponding periodic rates to the dividend rate applied to balances during the statement period.

ii. The dollar amount of dividends earned year-to-date.

iii. Bonuses paid (or any *de minimis* consideration of $10 or less).

iv. Fees for other products, such as safe deposit boxes.

v. Accounts not covered by the periodic statement disclosure requirements (passbook and term share accounts) may disclose any information on the statement related to such accounts, so long as such information is accurate and not misleading.

5. *When statement and crediting periods vary.* This rule permits credit unions, on dividend-bearing share accounts, to report the annual percentage yield earned and the amount of dividends earned on a statement other than on each periodic statement when the dividend period does not agree with, varies from, or is different than, the statement period. For dividend-bearing share accounts, credit unions may disclose the required information either upon each periodic statement, or on the statement on which dividends are actually earned (credited or posted) to the member's account. In addition, for accounts using the average daily balance method of calculating dividends, when the average daily balance period and the statement periods do not agree, vary or are different, credit unions may also report annual percentage yield earned and the dollar amount of dividends earned on the periodic statement on which the dividends or interest is earned. For example, if a credit union has quarterly dividend periods, or uses a quarterly average daily balance on an account, the first two monthly statements may not state annual percentage yield earned and dividends earned figures; the third "monthly" statement will reflect the dividends earned and the annual percentage yield earned for the entire quarter. The fees imposed disclosure must be given on the periodic statement on which they are imposed.

6. *Length of the period.* Credit unions must disclose the length of both the dividend period (or average daily balance calculation period) and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that "the dividends earned and the annual percentage yield earned are based on your dividend period (or average daily balance) for the period April 1 through April 30."

7. *Dividend period more frequent than statement period.* Credit unions that calculate dividends on a monthly basis, but send statements on a quarterly basis, may disclose a single dividend (and annual percentage yield earned) figure. Alternatively, a credit union may disclose three dividends earned and three annual percentage yield earned figures, one of each month in the quarter, as long as the credit union states the number of days (or beginning and ending date) in each dividend period if it varies from the statement period.

8. *Additional voluntary disclosures.* For credit unions not disclosing the annual percentage yield earned and dividends earned on all periodic statements, credit unions may place a notice on statements without dividends and annual percentage yield earned figures, that the annual percentage yield earned and dollar amount of dividends earned will appear on the first statement at the close of the dividend (or average daily balance) period, or similar wording. Credit unions may also choose to include a telephone number to call for interim information, if desired by a member.

(b) Statement Disclosures

(b)(1) Annual Percentage Yield Earned

1. *Ledger and collected balances.* Credit unions that accrue interest using the collected balance method may use either the ledger or collected balance methods to determine the balance used to determine the annual percentage yield earned. Ledger balance means the record of the balance in a member's account, as per the credit union's records. (The ledger balance may reflect additions and deposits for which the credit union has not yet received final payment). Collected balance means the record of balance in a member's account reflecting collected funds, that is, cash or checks deposited in the credit union which have been presented for payment and for which payment has actually been received. (See Regulation CC, 12 CFR 229.14).

(b)(2) Amount of Dividends or Interest

1. *Definition of earned.* The term "earned" is defined to include dividends and interest either "accrued" or "paid and credited." Credit unions may use either the "ledger" or the "collected" balance for either option. (See commentary to § 707.2(t).)

2. *Accrued interest.* Credit unions must state the amount of interest that accrued during the statement period, even if it was not credited.

3. *Terminology.* In disclosing dividends earned for the period, credit unions must use the term "dividends" or terminology such as: "Dividends paid," to describe dividends that have been credited; "Dividends accrued," to indicate that dividends are not yet credited.

4. *Closed accounts.* If a member closes an account between crediting periods and forfeits accrued dividends, the credit union may not show any figures for "dividends earned" or annual percentage yield earned for the period (other than zero, at the credit union's option).

5. *Extraordinary dividends.* Extraordinary dividends are not a component of the annual percentage yield earned or the dividend rate, but are an addition to the member's account. The dollar amount of the extraordinary dividends paid, denoted as a separate, identified figure, must be disclosed on the periodic statement on which the extraordinary dividends are earned. A credit union may also disclose information regarding the calculation of the extraordinary dividends, and additional annual percentage yield earned and dividend rate figures taking into account the extraordinary dividend, so long as such information is accurate and not misleading.

(b)(3) Fees Imposed

1. *General.* Periodic statements must state fees disclosed under § 707.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, credit unions may group fees if they are the same type. But, the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period."

Examples of fees that may *not* be grouped together are:

i. Monthly maintenance with excess activity fees.

ii. "Transfer" fees, if different dollar amounts are imposed—such as $.50 for share deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers with fees for other services, such as balance inquiry or maintenance fees.

3. *Identifying fees.* Statement details must enable the member to identify the specific fee. For example:

i. Credit unions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

ii. Credit unions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(b)(4) Length of Period

1. *General.* Credit unions providing the beginning and ending dates of the period must make clear whether both dates are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 1 and April 30 are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, credit unions must calculate the annual percentage yield earned based on account balances for each day the account was open.

Section 707.7—Payment of Dividends

(a) Permissible Methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay dividends on the full amount of principal in the account each day include:

i. The "rollback" method, also known as the "grace period" or "in by the 10th" method, where credit unions pay dividends on the lowest balance in the account for the period.

ii. The "increments of par value" method, where credit unions only pay dividends on full shares in an account, e.g., a credit union with $5 par value shares pays dividends on $20 of a $24 account balance.

iii. The "ending balance" method, where credit unions pay dividends on the balance in the account at the end of the period.

iv. The "investable balance" method, where credit unions pay dividends on a percentage of the balance, excluding an amount credit unions set aside for reserve requirements.

v. The "low balance" method, where credit unions pay dividends on the lowest balance in the account for any day in that period.

2. *Use of 365-day basis.* Credit unions may apply a daily periodic rate that is greater than 1/365 of the dividend rate—such as 1/360 of the dividend rate—as long as it is applied 365 days a year.

3. *Periodic dividend payments.* A credit union can pay dividends each day on the account and still make uniform dividend payments. For example, for a one-year term share account, a credit union could make monthly dividend payments that are equal to 1/12 of the amount of dividends that will be earned for a 365-day period (or 11 uniform monthly payments—each equal to roughly 1/12 of the total amount of dividends—and one payment that accounts to the remainder of the total amount of dividends earned for the period).

4. *Leap year.* Credit unions may apply a daily rate of 1/366 or 1/365 of the dividend rate for 366 days in a leap year, if the account will earn dividends for February 29.

5. *Maturity of term share accounts.* Credit unions are not required to pay dividends after term share accounts mature. Examples include:

i. During any grace period offered by a credit union for an automatically renewable term share account, if the member decides during that period not to renew the account.

ii. Following the maturity of nonrollover term share accounts.

iii. When the maturity date falls on a holiday, and the member must wait until the next business day to obtain the funds.

6. *Dormant accounts.* Credit unions must pay dividends on funds in an account, even if inactivity or the infrequency of transactions would permit the credit union to consider the account to be "inactive" or "dormant" (or similar status) as defined by state or other law or the account contract.

7. *Insufficient funds.* Credit unions are not required to pay dividends on checks or share drafts deposited to a member's account that are returned for insufficient funds. If a credit union accrues dividends on a check that it later determines is not good, it may deduct from the accrued dividends any dividends attributed to the proceeds of the returned check. If dividends have already been credited before the credit union determines the item has insufficient funds, the credit union may deduct the amount of the check and associated dividends from the account balance. The amount deducted will not be reflected in the dividend amount and annual percentage yield earned reported for the next period.

8. *Account drawn below par value of a share.* If a member draws his or her account below the par value of a share, dividends would continue to accrue on the account so long as any minimum balance requirement is met. However, under the *NCUA Standard FCU Bylaws,* if a member who reduces his or her share balance below the value of a par value share and does not increase the balance within at least six months, the credit union may terminate the member's membership. State-chartered credit unions may have similar termination provisions.

(a)(2) Determination of Minimum Balance to Earn Dividends

1. *General.* Credit unions may set minimum balance requirements that must be met in order to earn dividends. However, credit unions must use the same method to determine a minimum balance required to earn dividends as they use to determine the balance upon which dividends will accrue and pay. For example, a credit union that calculates dividends on the daily balance method must use the daily balance method to determine if the minimum balance to earn dividends has been met. Similarly, a credit union that calculates dividends on the average daily balance method must use the average daily balance method to determine if the minimum to earn dividends has been met. Credit unions may have a par value of a share that is different from the minimum balance requirement to earn dividends. (See commentary to § 707.4(b)(3)(i)).

2. *Daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for days when the balance drops below the required minimum balance if they use the daily balance method to calculate dividends. For example, a credit union could set a minimum daily balance level of $200 and pay dividends only those days the $200 daily balance is maintained.

3. *Average daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for the average daily balance calculation period in which the average daily balance drops below the required minimum, if they use the average daily balance method to calculate dividends. For example, a credit union could set a minimum average daily balance level of $200 and pay dividends only if the $200 average daily balance is met for the calculation period.

4. *Beneficial method.* Credit unions may not require members to maintain both a minimum daily balance and a minimum average daily balance to earn dividends, such as by requiring the member to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But a credit union could offer a minimum balance to earn dividends that includes an additional method that is "unequivocally beneficial" to the member such as the following:

i. A credit union using the daily balance method to calculate dividends and requiring a $500 minimum daily balance could choose to pay dividends on the account (for those days the minimum balance is not met) as long as the member maintained an average daily balance throughout the month of $400.

ii. A credit union using the average daily balance method to calculate dividends and requiring a $400 minimum average daily balance could choose to pay dividends on the account as long as the member maintained a daily balance of $500 for at least half of the days in the period.

iii. A credit union using either the daily balance method or average daily balance

method to calculate dividends that requires: (A) a $500 daily balance; or (B) a $400 average daily balance to pay dividends on the account.

5. *Paying on full balance.* Credit unions must pay dividends on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn dividends, and a member deposits $500, the credit union must pay the stated dividend rate on the full $500 and not just on the $200.

6. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine:

i. The daily or average daily balance on which dividends will be paid.

ii. Whether any minimum balance to earn dividends is met. (See commentary to Appendix A, Part II, which prohibits credit unions from using negative balances in calculating the dividends figure for the annual percentage yield earned.)

7. *Club accounts.* Credit unions offering club accounts (such as a "holiday" or "vacation" club accounts) cannot impose a minimum balance requirement for dividends based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the credit union cannot set a $500 minimum balance and then pay only if the member makes all 50 payments.

8. *Minimum balances not affecting dividends.* Credit unions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of dividends—such as to compute minimum balances for assessing fees.

(b) Compounding and Crediting Policies

1. *General.* Credit unions choosing to compound dividends may compound or credit dividends annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If members withdraw funds (without closing the account), prior to a scheduled crediting date, credit unions may delay paying the accrued dividends on the withdrawn amount until the scheduled crediting date, but may not avoid paying dividends.

3. *Closed accounts.* Subject to state or other law, a credit union may choose not to pay accrued dividends if members close an account prior to the date accrued dividends are credited, as long as the credit union has disclosed that fact. If accrued dividends are paid, accrued dividends must be paid on funds up until the account is closed or the account is deemed closed. For example, if an account is closed on a Tuesday, accrued dividends on the funds through Monday would be paid. Whether (and the conditions under which) credit unions are permitted to deem an account closed by a member is determined by state or other law, if any. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished. (See *NCUA Standard FCU Bylaws*, Art. III, § 3 (members have at least 6 months to replenish membership share before membership can terminate and the account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.)

(c) Date Dividends Begin to Accrue

1. *Relation to Regulation CC.* Credit unions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of dividend accrual, or when dividends need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Credit unions may calculate dividends by using a "ledger" balance or "collected" balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal or principal.* Credit unions must accrue dividends on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the credit union must accrue dividends on those funds through Monday.

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

1. *General.* All advertisements are subject to the rule against misleading or inaccurate advertisements, even though the disclosure applicable to various media differ. The word "profit" may be used when referring to dividend-bearing share accounts, as it reflects the nature of dividends. The word "profit" may not be used when referring to interest-bearing deposit accounts.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

i. For a tiered-rate account, it also provides the upper and lower dollar amounts of the tier corresponding to the advertised annual percentage yield.

ii. For a term share account, it also provides the term required to obtain the advertised annual percentage yield.

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

i. Any fee imposed if a minimum balance requirement is not met, or if the member exceeds a specified number of transactions.

ii. Transaction and service fees that members reasonably expect to be imposed on an account on a regular basis (see comments 4(b)(4)–1 and 2).

iii. A flat fee, such as a monthly service fee.

iv. Fees imposed to deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person).

4. *Other fees.* Examples of fees that are *not* maintenance or activity fees include:

i. Fees that are not required to be disclosed under § 707.4(b)(4).

ii. Check printing fees of any type.

iii. Fees for obtaining copies of checks, whether or not the original checks have been truncated or returned to the member periodically.

iv. Balance inquiry fees.

v. Fees assessed against a dormant account.

vi. Fees for using an ATM.

vii. Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home electronic credit union services.

viii. Stop payment fees and fees for share drafts or checks returned unpaid.

5. *Similar terms.* An advertisement may not use a term such as "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

6. *Specific account services.* Credit unions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, credit unions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead members by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. *Free for limited time.* If an account (or a specific account service) is free only for a limited period of time—for example, for one year following the account opening—the account (or service) may be advertised as free as long as the time period is stated.

8. *Conditions not related to share accounts.* Credit unions may advertise accounts as "free" for members that meet conditions not related to share accounts, such as the member's age. For example, credit unions may advertise a share draft account as "free for persons over 65 years old," even though a maintenance or activity fee may be assessed on accounts held by members that are 65 or younger.

(b) Permissible Rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any dividend rates stated must appear in conjunction with the annual percentage yields for each tier.

2. *Stepped-rate accounts.* An advertisement that states a dividend rate for a stepped-rate account must state all the dividend rates and the time period that each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a type of account (such as a term share account for a specified term) need not state the annual percentage yield applicable to every variation offered by the credit union or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a term share account, credit unions need not list each balance level and term offered. Instead, the advertisement may:

i. Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if a credit union offers a $25 bonus on all term share accounts and the annual percentage yield will vary depending on the term selected, the credit union may provide a disclosure of the annual percentage yield as follows: "For

example, our 6-month share certificate currently pays a 3.15% annual percentage yield."

ii. Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: "We offer term share certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month share certificate earns a 2.75% APY. Or, earn a 5.25% APY for three-year share certificate."

(c) When Additional Disclosures are Required

1. *Trigger terms.* The following are examples of information stated in advertisements that are not "trigger" terms:

i. "One, three, and five year share certificates available".

ii. "Bonus rates available".

iii. "1% over our current rate," so long as the rates are not determinable from the advertisement.

(c)(2) Time Annual Percentage Yield is Offered

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for an account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Dividend rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast. Similarly, dividend rates published in a daily newspaper or on television must be a rate reflecting either the preceding dividend period, or a prospective rate, and the option chosen should be noted.

2. *Reference to date of publication.* An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is "current through the date of this issue," if the periodical shows the date.

(c)(5) Effect of Fees

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

(c)(6) Features of Term Share Accounts

(c)(6)(i) Time Requirements

1. *Club accounts.* If a club account has a maturity date, but the term may vary depending on when the account is opened, credit unions may use a phrase such as: "The maturity date of this club account is November 15; its term varies depending on when the account is opened."

(c)(6)(ii) Early Withdrawal Penalties

1. *Discretionary penalties.* Credit unions imposing early withdrawal penalties on a case-by-case basis may disclose that they "may" (rather than "will") impose a penalty if that accurately describes the account terms.

(d) Bonuses

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *ATM messages.* Messages provided on ATM or computer screens are eligible for this exemption.

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor Signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a member (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Members outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by members from outside. An example is a banner in a credit union's glass-enclosed branch office, that is located behind a teller facing members but is readable by passersby.

(e)(3) Newsletters

1. *General.* The partial exemption applies to all credit union newsletters, whether instituted before or after the compliance date of part 707. Nor must a newsletter be of any particular circulation frequency (e.g., weekly, monthly, quarterly, biannually, annually, or irregularly) or of any certain format (e.g. magazine, bulletin, broadside, circular, mimeograph, letter, or pamphlet) in order to be eligible for the partial advertising exemption.

2. *Permissible Distribution.* In order for newsletters to retain the partial advertising exemption, newsletters can be sent to existing credit union members only. Any distribution reasonably calculated to reach only members is also acceptable, such as:

i. Mailing newsletters to existing members.

ii. Distributing newsletters at a function reasonably limited to members, such as an annual meeting or member picnic.

iii. Displaying or offering newsletters at a credit union lobby, branch, or office.

3. *Impermissible Distribution.* Distributing a newsletter in a place open to nonmembers, such as a sponsor's lunch room, is not reasonably calculated to reach only members, and such newsletter would be subject to all applicable advertising rules.

Section 707.9—Enforcement and Record Retention

(c) Record Retention

1. *Evidence of required actions.* Credit unions comply with the regulation by demonstrating they have done the following:

i. Established and maintained procedures for paying dividends and providing timely disclosures as required by the regulation, and

ii. Retained sample disclosures for each type account offered to members, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the dividend rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Credit unions must be able to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files). Credit unions must retain copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media, and newsletters.

3. *Payment of dividends.* Credit unions must retain sufficient rate and balance information to permit the verification of dividends paid on an account, including the payment of dividends on the full principal balance.

Appendix A to Part 707—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating dividends and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimals. For example; .008219178%, 3.00% for a 365 day year, would be rounded to no less than .00822%.

ii. The daily dividends or interest earned carried to five or more decimals. For example; $.08219178082, daily dividends on $1,000 at 3% for a 365 day year, would be rounded to no less than $.08219.

2. *Exponents in a leap year.* The annual percentage yield formula's exponent numerator will remain 365 in leap years. The "days in term" figure used in the denominator should be consistent with the length of term used in the dividends calculation.

3. *First tier of a tiered-rate account.* When credit unions use a rate table, the first tier of a tiered rate account is to be disclosed and advertised; "Up to but not exceeding * * *", "$.01 to * * *", or similar language.

4. *Term Share Accounts Opened in Midterm.* For club accounts that meet the definition of a term share account, the annual percentage yield is based on the maximum number of days in the term not to exceed 365 days (or 366 days in a leap year).

Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The dividend or interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. Regardless of the dividend calculation method, the balance used in the annual percentage yield earned

formula is the average daily balance. The average daily balance calculation is the sum of the balances for each day in the period divided by the number of days in the period. The balance for each day is based on a point in time; i.e. beginning of day balance, end of day balance, closing of day balance, etc. Each day's balance, for dividend accrual and payment purposes, must be based on the same point in time and cannot be based on the day's low balance.

2. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 707.7(a)(2).)

A. General Formula

1. *Accrued but uncredited dividends.* To calculate the annual percentage yield earned, accrued but uncredited dividends:

i. May not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends monthly, the balance may not be increased each day to reflect the effect of daily compounding. Assume a credit union will pay $13.70 in dividends on $100,000 for the first day, $6.85 in dividends on $50,013.70 for the second day, and $3.43 in dividends on $25,020.55 for the third day. The sum of each days balance is $175,000 (does not include accrued, but uncredited, dividends amounts $13.70, $6.85, and $3.43), thereby resulting in an average daily balance for the three days of $58,333.33.

ii. Must be included in the balance for succeeding statements if a statement is issued more frequently than compounded dividends is credited on an account. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends quarterly, the balance for the second monthly statement would include dividends that had accrued for the prior month. Assume a credit union will pay $411.78 in dividends on 30 days of $100,000, $427.28 in dividends on 31 days of $100,411.78, and $415.23 in dividends on 30 days of $100,839.06. The balance (average daily balance in the account for the period) for the second 31 days is $100,411.78.

2. *Rounding.* The dividends earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the dividends earned for a statement period is $20.074 and the credit union pays the member $20.07, the credit union must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay dividends based on the daily balance method, compound and credit dividends or interest quarterly, and send monthly statements, the credit union may, but need not, round accrued dividends to two decimals for calculating the "projected" or "anticipated" annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the dividends earned figure must reflect the amount actually paid.

3. *Compounding frequency using the average daily balance method.* Any compounding frequency, including daily compounding, can be used when calculating dividends using the average daily balance method. (See comment 707.7(b), which does not require credit unions to compound or credit dividends at any particular frequency).

B. Special Formula for Use Where Periodic Statement is Sent More Often Than the Period for Which Dividends are Compounded

1. *Statements triggered by Regulation E.* Credit unions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit dividends quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 707.6.

2. *Days in compounding period.* Credit unions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 707—Model Clauses and Sample Forms

1. *Modifications.* Credit unions that modify the model clauses will be deemed in compliance as long as they do not delete information required by TISA or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Credit unions may use inserts to a document (see Sample Form B–11) or fill-in blanks (see Sample Forms B–4 and B–5, which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a member when an account is opened, as required by § 707.4(a)(1). (See § 707.4(a)(2), which states the requirements for disclosing the annual percentage yield, the dividend rate, and the maturity of a term share account in responding to a member's request.)

4. *Compliance with Regulation E.* Credit unions may satisfy certain requirements under Part 707 with disclosures that meet the requirements of Regulation E. (See § 707.3(c).) The model clauses and sample forms do not give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Credit unions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), credit unions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* In the model clauses, italicized words indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 25, 1995" in the blank for "(date)" disclosure). Brackets and diagonals ("/") indicate a credit union must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–11) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

By order of the National Credit Union Administration Board on November 10, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–28364 Filed 11–18–94; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–210–AD; Amendment 39–9068; AD 94–23–06]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 airplanes, that requires modification of the currently installed one-stage shock absorbers on the main landing gear to two-stage shock absorbers. This amendment is prompted by the results of an evaluation of the air-to-ground sensing logic relative to the operation of other airplane systems during landing in adverse weather conditions. The actions specified by this AD are intended to prevent a delay in sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM).

DATES: Effective December 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

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

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 airplanes was published in the **Federal Register** on December 29, 1993 (58 FR 68786). That action proposed to require modification of the currently installed one-stage shock absorbers on the main landing gear (MLG) to two-stage shock absorbers.

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

One commenter supports the proposed rule.

One commenter opposes the proposed requirement to modify the currently installed one-stage shock absorber on the MLG to two-stage shock absorbers. This commenter states that the requirement is unnecessary due to the fact that the one-stage absorbers currently installed on Model A320 series airplanes, when operated within the certification standards of the airplane, do not adversely affect the airworthiness of these airplanes. This commenter contends that the purpose of the two-stage shock absorber is solely to improve passenger comfort. The FAA does not concur that this rulemaking action is unnecessary. The FAA has determined that the installation of the two-stage shock absorber will improve the airplane's ability to achieve the landing distances specified in the FAA-approved Airplane Flight Manual (AFM). Earlier activation of supplemental braking devices, which would be available by installing two-stage shock absorbers, will enhance deceleration of the airplane when necessary to meet the required landing distances. The FAA has re-evaluated the air-to-ground sensing logic, has reviewed all other available data, and has determined that an unsafe condition exists with regard to the airplane failing to achieve the landing distances specified in the FAA-approved AFM. Further, the FAA has determined that this AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

One commenter asserts that the FAA is taking action contrary to the normal course of action by proposing to issue the AD, when the French Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has not issued a parallel AD. From this comment, the FAA infers that the commenter is requesting that the rule be withdrawn or delayed until the DGAC issues a similar mandatory action. The FAA does not concur. While the United States and France observe the provisions of the bilateral airworthiness agreement, it remains the responsibility of the FAA to monitor and maintain the continuing airworthiness of U.S.-type certificated and registered airplanes. The bilateral airworthiness agreements do not restrict the FAA from issuing AD's based upon its own finding of an unsafe condition, regardless of the decision made by another airworthiness authority relative to the same subject. In that the FAA has determined that an unsafe condition exists, and that action is necessary to correct that condition in the fleet, the issuance of this AD is not only appropriate, but warranted.

One commenter suggests that the issuance of this rule be delayed until such time that a lower cost alternative can be developed by the manufacturer. In the interim, this commenter suggests that the proposal be revised to require a periodic inspection to be performed at 15-month intervals. The FAA does not concur. To delay this action would be inappropriate, since the FAA has determined that an unsafe condition exists, a corrective modification is currently available, and the modification must be accomplished to ensure continued safety. However, paragraph (b) of the final rule does provide affected operators the opportunity to obtain approval from the FAA for alternative methods of compliance by presenting justification for those alternatives.

Two commenters request that the proposed compliance time of 12 months be extended to accomplish the proposed modification of the shock absorbers. One of these commenters requests that the compliance time be extended to 24 months. The other commenter requests that the compliance time be extended to 60 months, in light of the low probability of duplicating the combination of factors that may result in an accident. This commenter notes that, due to the unavailability of manpower and tooling, the proposed modification would result in a minimum of three days of downtime per airplane. Both commenters state that the manufacturer may be unable to provide an adequate number of MLG pistons to accomplish the modification within the proposed 12-month compliance time.

The FAA concurs that the compliance time may be extended somewhat. The FAA acknowledges the low probability of duplicating all of the factors that may result in an accident. However, in the unlikely event that all of the factors should be duplicated, airplanes equipped with dual stage shock absorbers would be able to activate, at an earlier stage of the landing roll, all available braking devices, including the deployment of ground spoilers, application of wheel brakes, and deployment of thrust reversers. Proper activation of braking devices would permit the airplane to land within the distances specified in the FAA-approved AFM. In light of the potential for these airplanes to overrun the end of the runway due to delayed onset of braking, the FAA cannot concur with the one commenter's request to extend the compliance time to 60 months; the FAA considers that such an extension (five times the amount of time proposed) would adversely affect safety. However, it was not the FAA's intent to impose an undue economic burden on operators by requiring them to take airplanes out of service for an extended period of time due to the problem posed by a lack of available parts to accomplish the modification required by this AD. Although the airframe manufacturer has indicated that ample modification parts are currently available, the supplier of those parts has indicated that shipping to operators may take an extended period of time. In light of this, the FAA has determined that an extension of the compliance time to 18 months is appropriate; it will allow sufficient time for operators to obtain the parts necessary to accomplish the modification, while minimizing the economic burden on operators. The FAA finds that this extension of the compliance time will not adversely affect the safety of the fleet. Accordingly, paragraph (a) of the final rule has been revised to extend the compliance time to accomplish the modification of the shock absorber to 18 months.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 58 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $671,650, or $19,190 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–23–06 Airbus Industrie: Amendment 39–9068. Docket 93–NM–210–AD.

Applicability: Model A320–111, –211, and –231 airplanes, as listed in Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a delay in sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM), accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the currently installed one-stage shock absorbers to two-stage shock absorbers, in accordance with Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993.

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

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

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

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 21, 1994.

Issued in Renton, Washington, on November 4, 1994.

S. R. Miller,

Acting Management, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 94–27849 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–32–AD; Amendment 39–9069; AD 94–23–07]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires various modifications and inspections of the flight controls, doors, and horizontal stabilizers. This amendment is prompted by a recommendation by the Systems Review Task Force (SRTF) for accomplishment of certain modifications and inspections that will enhance the controllability of these airplanes in the unlikely event of flight control malfunction or failure. The actions specified by this AD are intended to ensure airplane survivability in the event of damage to fully powered flight control systems.

DATES: Effective December 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed

Model L–1011–385 series airplanes was published in the **Federal Register** on June 9, 1994 (59 FR 29745). That action proposed to require various modifications and inspections of the flight controls, doors, and horizontal stabilizers.

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

One commenter supports the proposed rule.

One commenter suggests that reworking and changing the part number of the cross-tie interlock bungees on the servo of the stabilizer, as described in Lockheed Service Bulletin 093–27–280, should be considered terminating action for reworking the bungee, as described in Lockheed Service Bulletin 093–27–279. The FAA recognizes that accomplishment of the actions in Lockheed Service Bulletin 093–27–280 is an acceptable means of compliance for accomplishment of the inspection and modification described in Lockheed Service Bulletin 093–27–279. The FAA finds that no change to the final rule is necessary, since this provision was included in NOTE 2 under paragraph (a) of the proposed rule.

One commenter requests that the compliance time of four years, as specified in paragraph(a) of the proposal, be revised to coincide with parts availability. The commenter suggests a compliance time of four years after all required parts kits are available or five years after the effective date of the AD. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA is not aware of any parts availability problem at this time and, therefore, assumes that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

The same commenter requests that the compliance time for accomplishment of Lockheed Service Bulletin 093–55–030 be extended. This commenter performs work in the area addressed by the service bulletin at heavy maintenance checks, which occur at intervals of 27,000 flight hours. The commenter suggests that even a five-year compliance time would be inadequate for accomplishment of this service bulletin. However, the commenter does not request a specific compliance time. The FAA does not concur with the commenter's request to extend the compliance time. The actions described in Lockheed Service Bulletin 093–55–030 should take only five work hours to complete. The FAA has determined that these actions can be accomplished during regularly scheduled maintenance visits (other than heavy maintenance checks) or inspection activities without having a significant adverse effect on airplane scheduling. However, paragraph (b) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 236 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 87 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for certain modifications will be supplied by the manufacturer at no cost to operators. Required parts for certain other modifications will be minimal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $559,845 or $4,785 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions required by this AD were to be conducted as "stand alone" actions. However, the 4-year compliance time specified in paragraph (a) of this AD should allow ample time for the modifications and inspections to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–23–07 Lockheed Aeronautical Systems Company: Amendment 39–9069. Docket 94–NM–32–AD.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure airplane survivability in the event of damage to fully powered flight control systems, accomplish the following:

(a) Within 4 years after the effective date of this AD, accomplish modifications and inspections of the flight controls, modification of the doors, and modification of the horizontal stabilizers, in accordance with Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992 (hereinafter referred to as the CSB). This paragraph requires accomplishment of certain Lockheed service bulletins identified in the CSB, as listed below. Modifications or inspections accomplished previously in accordance with earlier revisions of the service bulletins listed below are acceptable for compliance with this AD.

Service bulletin No.	Revision level	Date of issuance
093–27–A102 (Alert Service Bulletin)	Original	March 13, 1974.
093–27–178	Original	April 30, 1979.
093–27–200	2	September 28, 1982.
093–27–279	1	February 1, 1984.
093–27–289	Original	December 3, 1984.
093–27–292	3	March 28, 1991.
093–52–061	1	November 1, 1974.
093–55–030	1	March 20, 1991.

Note 1: Paragraph (a) of this AD does not require accomplishment of any of the service bulletins listed in the CSB other than those identified above.

Note 2: Accomplishment of the actions described in Lockheed Service Bulletin 093–27–280, dated December 16, 1983, is considered an acceptable means of compliance for accomplishment of the inspection and modification described in Lockheed Service Bulletin 093–27–279, Revision 1, dated February 1, 1984.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta, ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(d) The modifications and inspections shall be done in accordance with Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company (LWEC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, S.W., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 21, 1994.

Issued at Renton, Washington, on November 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27850 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–125–AD; Amendment 39–9071; AD 94–23–08]

Airworthiness Directives; Jetstream Model HS 748 Series 2A and 2B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Model HS 748 Series 2A and 2B airplanes. This action requires repetitive replacement of the structurally significant items (SSI) on the nose landing gear (NLG) and main landing gear (MLG) with serviceable SSI's. This amendment is prompted by fatigue testing which revealed that the SSI's on the NLG and the MLG have a limited service life. The actions specified in this AD are intended to ensure the replacement of the SSI's that have reached the maximum life limit; SSI's that are not replaced could fail and lead to the failure of the NLG and MLG during taxi, take-off, or landing.

DATES EFFECTIVE: December 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Jetstream Model HS 748 series 2A and 2B airplanes. The CAA advises that results of fatigue testing, conducting by Dowty [the manufacturer of the nose landing gear (NLG) and main landing gear (MLG) components], revealed that certain components in the NLG and MLG specified as structurally significant items (SSI) have a limited service life. Investigation revealed that these SSI's, upon attaining or exceeding a certain number of landings, can fail due to fatigue-related stress. If not replaced in a timely manner, the SSI's could fail and lead to the failure of the NLG and MLG during taxi, take-off, or landing.

Dowty has issued Service Bulletin 32–104E, dated January 20, 1993, which describes procedures for determining the number of landings accumulated on the SSI's on the NLG and MLG, and

repetitively replacing these SSI's with serviceable SSI's at regulator intervals. The CAA classified this service bulletin as mandatory.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure the replacement of the SSI's that have reached the maximum life limit. This AD requires initially determining the number of landings accumulated on the SSI's currently installed in the NLG and MLG, and repetitively replacing the SSI's with serviceable SSI's, upon the accumulation of a certain number of landings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There currently are no Jetstream Model HS 748 series 2A and 2B airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 40 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $2,400 per airplane, per replacement cycle.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–125–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–23–08 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Limited): Amendment 39–9071. Docket 94–NM–125–AD.

Applicability: All Model Jetstream Model HS 748 series 2A and 2B airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure replacement of the SSI's that have reached the maximum life limit, accomplish the following:

(a) Within 60 days after the effective date of this AD, determine the number of landings accumulated on each structurally significant item (SSI) currently installed in the nose landing gear (NLG) and main landing gear (MLG), in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–104E, dated January 20, 1993.

(1) If the number of landings accumulated on an SSI is equal to or greater than the number of landings specified in the "Life Limitations" column of the applicable table in the service bulletin, prior to further flight, replace the SSI with a serviceable SSI, in accordance with the service bulletin. Thereafter, replace the SSI at intervals not to exceed the accumulation of the number of landings specified in the "Life Limitations column of the applicable table in the service bulletin.

(2) If the number of landings accumulated on the SSI is less than the number of landings specified in the "Life Limitations" column of the applicable table in the service bulletin, replace the SSI with a serviceable SSI prior to or upon the accumulation of the

number of landings specified in the "Life Limitations" column of the applicable table in the service bulletin. Thereafter, replace the SSI at intervals not to exceed the accumulation of the number of landings specified in the "Life Limitations" column of the applicable table in the service bulletin.

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

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

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

(d) The replacement shall be done in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–104E, dated January 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace, Customer Support Center, P.O. Box 49, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 6, 1994.

Issued in Renton, Washington, on November 7, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27966 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 121

International Crewmember Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Compliance with certificate application process.

SUMMARY: In keeping with the President's initiative to streamline government, the Department of State (DOS) has determined that it will cease processing applications for the international crewmember certificate after December 31, 1994. By this document, the FAA is informing the public that applications for international crewmember certificates, currently processed under 14 CFR 121.721, 121.723 and 135.43, will no longer be processed by the FAA. These certificates, which facilitate the entry and clearance of those crewmembers into International Civil Aviation Organization (ICAO) contracting states, will no longer be issued, and crewmembers will have to obtain standard international passports. This document is intended to allow air carriers, pilots, and other affected individuals sufficient time to make alternative arrangements.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel V. Meier Jr., Project Development Branch, AFS–240, Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3749.

SUPPLEMENTARY INFORMATION:

Background

The Department of State (DOS) informed the FAA that it will cease processing applications for the international crewmember certificate after August 1, 1994, and recommended that the FAA require all applicants to possess valid passports in accordance with 22 U.S.C. 2705. Since the FAA cannot verify an applicant's citizenship, and because DOS will cease processing for the international certificate, the FAA also planned to cease processing applications by August 1, 1994.

FAA requested an extension of the procedure, including DOS processing, beyond the August 1, 1994, deadline until rulemaking could be completed to withdraw regulations (14 CFR 121.721, 121.723 and 135.43) that will be obsolete due to DOS's actions. DOS agreed to extend its deadline until December 31, 1994. Since the FAA's notice and final rule will not be complete before DOS ceases processing applications, the FAA is publishing this document to inform the public that it will be futile to submit applications for the international crewmember certificate to the Flight Standards District Office (FSDO) after December 31, 1994.

The FAA is initiating rulemaking action to eliminate the regulatory procedures that will be obsolete after December 31, 1994.

Issued in Washington, D.C., on November 2, 1994.

Thomas C. Accardi,

Director of Flight Standards Service.

[FR Doc. 94–28280 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Illinois regulatory program (hereinafter referred to as the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to three statutes in the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) pertaining to small operator assistance, vegetation requirements for lands eligible for remining, and fees and civil penalties. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 and the Energy Policy Act of 1992. It is also intended to improve operational efficiency.

EFFECTIVE DATE: November 21, 1994.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, 511 W. Capitol, Suite 202, Springfield, Illinois 62704. Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated September 9, 1994 (Administrative Record No. IL–1550), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed

amendment at its own initiative. The proposed amendment pertains to changes to the State Act (225 ILCS 720) which were enacted through Public Act 88–599 (HB 2349) and signed into law by the Governor of Illinois on September 1, 1994. Illinois proposed to revise 225 ILCS 720/2.02(b) concerning small operator assistance, to add new subsection 225 ILCS 720/3.15(e) concerning the responsibility period for successful revegetation on lands eligible for remining, and to revise 225 ILCS 720/9.07(a) concerning the deposit of fees and civil penalties.

OSM announced receipt of the proposed amendment in the September 29, 1994, **Federal Register** (59 FR 49618), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 31, 1994.

III. Director's Findings

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

1. 225 ILCS 720/2.02 Contents of Permit Application

Illinois proposed revisions to 225 ILCS 720/2.02 pertaining to the Illinois Small Operator Assistance Program (SOAP).

a. At 225 ILCS 720/2.02(b), Illinois proposed to increase the amount of probable total annual production allowed for SOAP applicants from 100,000 to 300,000 tons.

On November 5, 1990, the Abandoned Mine Reclamation Act of 1990 amended section 507(c)(1) of SMCRA to increase the amount of probable total annual production allowed for SOAP applicants to 300,000 tons. Therefore, the Director finds Illinois' proposed revision at 225 ILCS 720/2.02(b) is consistent with and no less stringent than the counterpart provision in section 507(c)(1) of SMCRA.

b. At 225 ILCS 720/2.02(b), Illinois also proposed the deletion of existing program services at subsections (b)(1) through (b)(3) and the addition of the following new or enhanced program services at subsections (b)(1) through (b)(6): (1) The determination of probable hydrologic consequences, including the engineering analyses and designs necessary for the determination; (2) the development of cross-section maps and plans; (3) the geologic drilling and statement of results of test borings and core samplings; (4) the collection of archaeological information and any other archaeological and historical information required by the Department, and the preparation of plans necessitated thereby; (5) pre-blast surveys; and (6) the collection of site specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under this Act.

On October 24, 1992, the Energy Policy Act of 1992 amended section 507(c)(1) of SMCRA by adding substantively the same new and enhanced program services at paragraphs (A) through (F). The Director finds that the provisions for program services at 225 ILCS 720/2.02 (b)(1) through (b)(6) are consistent with and no less stringent than the provisions for program services at section 507 (c)(1)(A) through (c)(1)(F) of SMCRA.

c. At 225 ILCS 720/2.02(b), Illinois also proposed the following SOAP assistance reimbursement requirement: A coal operator that has received assistance pursuant to this subsection shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by adding section 507(h) which contains substantively the same reimbursement requirement as the Illinois proposal for services rendered under section 507(c)(1) or section 507(c)(2) of SMCRA. The Illinois proposal is consistent with section 507(h) of SMCRA with one exception. It does not require reimbursement for services provided under section 507(c)(2) of SMCRA.

OSM currently interprets section 507(c)(2) of SMCRA to require that the Secretary of the Interior, and not the State regulatory authority, provide or assume the cost of training coal operators. In accordance with that interpretation, Illinois is not, at this time, obligated to propose statutory provisions consistent with section 507(c)(2) and section 507(h) of SMCRA with regard to training assistance. Therefore, the Director finds the new provision at 225 ILCS 720/2.02(b) is consistent with and no less stringent than the counterpart provision at section 507(h) of SMCRA as it relates to reimbursement of costs for services rendered under section 507(c)(1) of SMCRA.

2. 225 ILCS 720/3.15 Vegetation

Illinois proposed to amend 225 ILCS 720/3.15 by adding two provisions at new subsection (e) pertaining to the responsibility period for successful revegetation on lands eligible for remining.

a. Illinois proposed to add a provision at 225 ILCS 720/3.15(e) which requires that the responsibility period for successful revegetation on lands eligible for remining shall be two full years after the last year of augmented seeding, fertilizing, irrigation or other work.

On October 24, 1992, the Energy Policy Act of 1992 amended SMCRA by adding section 515(b)(20)(B) which contains a substantively identical requirement for lands eligible for remining. Therefore, the Director finds that the provision at 225 ILCS 720/3.15(e) is consistent with and no less stringent than the counterpart provision in section 515(b)(20)(B) of SMCRA.

b. Illinois also proposed a provision at 225 ILCS 720/3.15(e) which clarifies that the requirement discussed in finding 2.a does not preclude application of responsible land management practices if they are deemed necessary and approved by Illinois.

Although section 515(b) of SMCRA does not contain a similar provision, this provision is not inconsistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) which allow approval of selective husbandry practices without restarting the responsibility period for revegetation if the regulatory authority obtains prior approval from the Director that the practices are normal husbandry practices.

The Illinois program contains counterpart regulations which allow approval of selective husbandry practices at 62 Illinois Administrative Code (IAC) 1816.116(a)(2)(C) and 1817.116(a)(2)(C). Illinois limits its approval to normal conservation and land use management practices for the State of Illinois that are included in its regulations at 62 IAC 1816.116 and 1817.116. The selective husbandry practices included in the Illinois program have been approved by OSM as normal husbandry practices in accordance with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

Therefore, the Director finds Illinois' proposed provision at 225 ILCS 720/3.15(e), when read in light of the regulatory limitations at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C), is not inconsistent with the requirements of section 515(b)(20)(B) of

SMCRA and the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

3. 225 ILCS 720/9.07 Fees and Forfeitures

Illinois revised 225 ILCS 720/9.07(a) by requiring all fees and civil penalties collected under the State Act be deposited into the Coal Mining Regulatory Fund instead of the general revenue fund.

The revision was proposed to comply with new requirements in the State Finance Act (30 ILCS 105). Illinois Public Act 88–599 established the Coal Mining Regulatory Fund and added section 6z–36 to the State Finance Act. Section 6z–36 requires all moneys collected as fees and civil penalties under the State Act be deposited into the Coal Mining Regulatory Fund. The moneys in the fund will then be annually appropriated to the Department of Mines and Minerals for the enforcement of coal mining regulatory laws and rules.

There is no direct Federal counterpart to 225 ILCS 720/9.07(a). However, the proposed amendment is not inconsistent with the general requirements for permit fees at section 507(a) of SMCRA or 30 CFR 777.17 of the Federal regulations, which establish provisions for permit fees. Also, the proposed amendment is not inconsistent with the general requirements for civil penalties at Section 518 of SMCRA or 30 CFR 845 of the Federal regulations, which establish provisions for assessment of civil penalties. Therefore, the Director finds that the proposed revision to 225 ILCS 720/9.07(a) is not inconsistent with the requirements of SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program. No Federal agency comments were received.

Environmental Protection Agency (EPA)

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

Pursuant to 732.17(h)(11)(ii), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IL–1551). EPA responded on September 27, 1994, that it had reviewed the proposed amendment and had no comment to offer (Administrative Record No. IL–1554).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letter dated September 21, 1994, OSM solicited comments from the SHPO and ACHP (Administrative Record No. IL–1553). The SHPO gave its written concurrence with the proposed amendment on October 18, 1994 (Administrative Record No. IL–1557).

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Illinois on September 9, 1994.

The Director is also taking this opportunity to make a correction to 30 CFR 913.10. The Department of Mines and Minerals was empowered by the State Act at 225 ILCS 720/9.02 (formerly Ill. Rev. Stat. 1991, ch. 96 1/2, Section 7909.02) to act as the regulatory authority for the State of Illinois under SMCRA. Therefore, the existing designation at 30 CFR 913.10 which deems the Department of Mines and Minerals, Division of Land Reclamation as the regulatory authority in Illinois is being removed. The Department of Mines and Minerals is designated as the regulatory authority in Illinois, and 30 CFR 913.10 is being revised to reflect this decision.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Illinois program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

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

National Environmental Policy Act

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

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 15, 1994.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Support Center.

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

PART 913—ILLINOIS

1. The authority citation for Part 913 is revised to read as follows:

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

2. Section 913.10 is amended by revising the second sentence to read as follows:

§ 913.10 State regulatory program approval.

* * * Beginning on that date, the Department of Mines and Minerals shall be deemed the regulatory authority in Illinois for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. * * *

3. Section 913.15 is amended by adding paragraph (q) to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(q) The following revisions to or the addition of the following statutes, as submitted to OSM on September 9, 1994, are approved effective November 21, 1994.

225 ILCS 720	Topic
2.02(b)	Contents of Permit Application; SOAP provisions.
3.15(e)	Vegetation; revegetation requirements for lands eligible for remining.
9.07(a)	Fees and Forfeitures; deposit of permit fees and civil penalties into the Coal Mining Regulatory Fund.

[FR Doc. 94–28625 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8a

RIN 2900–AG36

Veterans Mortgage Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: This document amends the Department of Veterans Affairs regulations regarding Veterans Mortgage Life Insurance (VMLI) to reflect that the statutory maximum amount of coverage available under the VMLI program has been increased to $90,000. This amendment is necessary to conform the regulations to statutory provisions.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory C. Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 951–5710.

SUPPLEMENTARY INFORMATION: Section 204 of the "Veterans' Benefits Act of 1992", Public Law 102–568, amended 38 U.S.C. 2106 to provide for an increase from $40,000 to $90,000 in the maximum amount of coverage available under the VMLI, effective December 1, 1992. This amendment to regulations merely reflects the statutory change.

VA has determined that prior publication for notice and public comment is unnecessary since the amendments merely reflect statutory changes and are not subject to rule-making requirements.

The Secretary of Veterans Affairs hereby certifies that these final regulations will not have a significant 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 these final regulations merely reflect statutory changes.

The Catalog of Federal Domestic Assistance Program number for these regulations is 64.103.

List of Subjects in 38 CFR Part 8a

Veterans' Mortgage Life Insurance.

Approved: November 8, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 8a is amended as set forth below:

PART 8a—VETERANS' MORTGAGE LIFE INSURANCE

1. The authority citation for Part 8a continues to read as follows:

Authority: 72 Stat. 1114; 85 Stat. 320; 38 U.S.C. 501, 2106, unless otherwise noted.

§§ 8a.2 and 8a.4 [Amended]

2. In paragraphs 8a.2(a), 8a.2(b)(1) and 8a.4 the term "$40,000" is removed wherever it appears and the term "$90,000" is added in place thereof.

3. The following sentence is added at the end of paragraph 8a.2(b)(7):

* * * * *

(b) * * *

(7) * * * All claims, arising out of the deaths of insured veterans occurring on or after October 1, 1976, but prior to December 1, 1992, shall be subject to the $40,000 lifetime maximum amount of insurance then in effect.

[FR Doc. 94–28604 Filed 11–18–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63 and 71

[FRL–5106–2]

RIN 2060–AF10

Federal Operating Permit Programs; Permits for Early Reductions Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking establishes an interim Federal permitting program solely for sources participating in the

Early Reductions Program under section 112(i)(5) of the Clean Air Act (Act), as amended. It is designed to provide a temporary permitting mechanism until such time as permanent permitting programs become effective pursuant to title V of the Act. Under this interim program, EPA will be able to permit early reductions sources in a timely manner, thus ensuring that emission reductions achieved are maintained and providing assurance to participating sources that they have qualified for the benefits of the Early Reductions Program.

Also promulgated in this rulemaking are two amendments to the Early Reductions Rule. The first appends to enforceable commitments made under the Early Reductions Program information on emission reduction measures employed to achieve early reductions and the second clarifies deadlines for submitting post-reduction emission information to EPA.

EFFECTIVE DATE: November 21, 1994.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35) , Research Triangle Park, North Carolina 27711, telephone number 919–541–2777. Please refer to "Federal Operating Permit Programs: Permits for Early Reductions Sources—Background Information for Promulgated Rule" (EPA–453/R–94–061b). The BID contains (1) a summary of changes made to the rule since proposal and (2) a summary of all public comments made on the proposed standards and EPA's response to those comments.

Docket. Docket number A–93–08, containing supporting information used in developing the promulgated rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919–541–5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Introduction

The Clean Air Act Amendments of 1990 rewrote existing section 112, which directs the EPA to establish national emission standards for hazardous air pollutants (HAP). A new provision, section 112(i)(5), offers to sources that achieve substantial early reductions of HAP emissions an extension in the compliance date for applicable standards to be promulgated under section 112(d). To help implement this "Early Reductions Program," EPA is acting in this notice to promulgate an interim, limited scope permit program, pursuant to title V of the Act. This interim program will allow EPA to process applications under the Early Reductions Program in a timely manner, until such time as comprehensive title V permitting mechanisms become available. A detailed rationale for this rulemaking accompanied the proposal notice, which was published in the **Federal Register** on December 29, 1993 (57 FR 68804).

II. Summary of Significant Comments and Changes Since Proposal

The comment period for the proposed early reductions permits rule ended on March 3, 1994, and EPA received five comment letters. Copies of the comments reside in the docket for this rulemaking and are available for public inspection (see "Docket" in the **ADDRESSES** section of this preamble for further information). A summary of public comments and EPA's responses to the comments are contained in the background information document mentioned in the **ADDRESSES** section of this preamble.

Consideration of these comments and other deliberations within the Agency led to a few changes from the proposed permits rule, although none of the changes altered the rule significantly. A brief summary of the more notable changes appear in the list below (an expanded explanation of these changes is contained in the background information document).

1. A definition of "post-reduction year" has been added, as well as clarifying language pertaining to deadlines for filing post-reduction emission information. These changes make clearer the requirements for demonstrating that qualifying reductions have been achieved, and provide more flexibility to sources that wish to make reduction demonstrations before the statutory deadline.

2. The proposed requirement to submit an application in a computerized format, in addition to the typed application, has been deleted. The EPA has not yet settled on a computer format for such submittals.

3. The proposed rule contained a provision requiring permittees to report any deviations from permit terms or conditions within ten days of occurrence. This requirement has been revised to require "prompt" reporting of deviations, where "prompt" will be defined in each early reductions permit and will be based on the type and degree of the deviation. This is consistent with similar language in the part 70 for State title V permit programs.

4. The procedures for making administrative amendments to existing early reductions permits have been revised. The revisions are consistent with recently proposed revisions to the administrative amendments procedures specified in the part 70 rule for State title V programs. The revised procedures clarify the permittee's actions in initiating an administrative amendment and set the effective date of an amendment at 60 days after receipt by the Administrator of the amendment application (assuming the Administrator does not reject the amendment prior to that time).

Also changed under the administrative amendments provisions of the rule is the list of actions qualifying as administrative amendments (§ 71.26(c)(1)). A new provision (§ 71.26(c)(1)(v)) allows certain additional permit revisions to be treated as administrative amendments provided that the Administrator determines, on a case-by-case basis, that a proposed revision is similar to those qualifying actions already specifically listed. The new provision is based upon a similar provision in the part 70 rule and is a response to certain commenters requests for additional flexibility to make relatively insignificant changes at an early reductions source without having to wait for a lengthy EPA approval process. Under the new provision, EPA would be able to process through administrative amendment procedures certain changes not listed in paragraphs § 71.26(c)(1)(i) through (iv) but which are ministerial in nature and therefore do not require the exercise of judgment on the part of EPA, or review by the public or affected States.

5. Another proposed provision deleted in the final rule was the requirement that specialty permit applications contain a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act. This provision was included in the proposal because a similar provision appears in the part 70 rule. However, upon further reflection,

EPA has realized that the provision is not relevant to early reductions permit applications. This specialty permit program focuses narrowly on implementing the Early Reductions Program for a defined early reductions source and associated HAP emissions, and within that context the only monitoring and compliance certification requirements applicable to the early reductions source will be those delineated in the specialty permit issued later to the participating company. Each specialty permit will implement the Act directive to provide for enhanced monitoring on major sources by specifying monitoring requirements tailored to the early reductions source and consistent with the characteristics of the Early Reductions Program. Compliance certification requirements also will be imposed to comply with title V of the Act. However, it is inappropriate to ask a source to discuss, in the permit application, its compliance status for these requirements because they do not yet exist.

In the proposed rule preamble, EPA requested comment on whether the final early reductions permits rule should contain procedures for minor permit revisions. Such procedures would be used to process changes that could not be processed as administrative amendments but which encompass relatively minor changes to the source or its operation and, therefore, would not warrant the longer (12 month) review and issuance process allotted to significant source changes. Two commenters requested that EPA include minor permit revision procedures in the final rule to provide sources the ability to make certain changes in the early reductions source quickly, which they consider to be key to remaining competitive within their respective industries. The EPA has carefully considered the commenters' requests for a more expedited permit revision procedure, and has decided not to include such a procedure at this time. There are two primary reasons for this decision. First, the part 70 permit revision procedures are currently the subject of litigation in the D.C. Circuit Court of Appeals. In part as a response to this litigation, EPA has proposed revisions to these part 70 procedures. The current uncertainty over EPA's legal discretion to provide for expeditious permit revision procedures cautions against providing for any such procedures here in this final rule. Second, as stated in the preamble to the proposal of this rule, EPA believes the nature of these specialty permits, containing limitations that are uniquely tailored to the facility, should reduce the need for permit revisions. Another factor that deemphasizes the need for a more expedited revision procedure is the fact that a specialty permit will, relatively soon after permit issuance, be transferred to the jurisdiction of the State, following which it will be subject to the revision procedures of the State program.

The EPA may in the future decide to revise this rule to provide more expedited procedures for minor permit revisions. However, EPA currently intends await the outcome of the revisions to part 70 before taking any such action.

As noted earlier, this notice also contains amendments to the Early Reductions Rule. One of the amendments, proposed along with the early reductions permits proposal, is promulgated without change and appends to enforceable commitments made under the Early Reductions Program the information on emission reduction measures employed to achieve early reductions. Such information is required as part of a participant's post-reduction emission demonstration. The other amendments mirror the changes described in item 1 of the above list pertaining to the post-reduction emissions demonstration. These amendments make the Early Reductions Rule consistent with the permits rule promulgated in this notice.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–08. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, 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. The docket is available for public inspection at the EPA's Air Docket, which is listed under the ADDRESSES section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/93), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect 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 obligation of recipients thereof;

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

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

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the specialty permits rule and the amendments to the Early Reductions Rule will not have a significant economic impact on a substantial number of small business entities. The EPA estimates that this rule will have no direct economic impact on any business entities for two reasons. First, the Early Reductions Program is a voluntary program, an alternate means of complying with otherwise applicable standards forthcoming under section 112(d) of the Act. Generally, companies would participate in the program if they thought their compliance costs would be less than those associated with meeting otherwise applicable standards. Costs could be less because the 90 (95) percent reduction threshold to qualify for an extension likely will be lower than the reduction required by applicable section 112(d) standards. Moreover, the Early Reductions Rule provides owners or operators considerable flexibility to average qualifying reductions among participating emissions units.

Second, the specialty permits program rulemaking simply adapts for earlier use the intended mechanism for eventually delineating and enforcing all Act requirements at individual facilities, namely the title V permit. Sources not electing to participate in the Early Reductions Program would have to obtain title V permits anyway when comprehensive title V. Therefore, this rulemaking does not add any additional requirements to participants. The impacts from the requirements of title V were considered in the promulgated part 70 rule for State comprehensive

programs (57 FR 32250). Moreover, the proposed change to the Early Reductions Rule would have no economic effect on any large or small business entities.

D. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned the OMB control no. 2060–0276. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1650.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden averaging 554 hours per respondent for one-time burden items and 43 hours per respondent annually for recurring burden items. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding 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."

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Hazardous air pollutants, Operating permits, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 8, 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.*, 136–136y; 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 in numerical order a new heading and a new entry under the new heading to read as follows:

9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Federal Operating Permit Programs	
71.24—71.26	2060–0276
* * * * *	

PART 63—[AMENDED]

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

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

Subpart D—[Amended]

2. Section 63.71 is amended by adding the definition of "Post-reduction year" in alphabetical order to read as follows:

§ 63.71 Definitions.

* * * * *

Post-reduction year means the one year period beginning with the date early reductions have to be achieved to qualify for a compliance extension under subpart D of this part, unless a source has established with the permitting authority an earlier one year period as the post-reduction year. For most sources, the post-reduction year would begin with the date of proposal of the first section 112(d) standard applicable to the early reductions source; however, for sources that have made enforceable commitments, it would be the year from January 1, 1994 through December 31, 1994.

* * * * *

3. In § 63.75, paragraph (g) is added to read as follows:

§ 63.75 Enforceable commitments.

* * * * *

(g) The control measure information required under § 63.74(d)(1) as part of post-reduction emission documentation and submitted in a permit application according to the provisions of § 63.77 shall become part of an existing enforceable commitment upon receipt of the permit application by the permitting authority. An owner or operator shall notify the permitting authority of any change made to the source during calendar year 1994 which affects such control measure information and shall mail the notice within 5 days (postmark date) of making the change. The notice shall be considered an amendment to the source's enforceable commitment.

4. Section 63.77 is amended by revising paragraph (e) to read as follows:

§ 63.77 Application procedures.

* * * * *

(e) If the post-reduction year does not end at least one month before the permit application deadline under paragraph (c) of this section, the source may file the post-reduction emissions information required under § 63.74(d)(2), (d)(3), and (d)(5) later as a supplement to the original permit application. In such cases, this supplemental information shall be submitted to the permitting authority no later than one month after the end of the post-reduction year.

* * * * *

5. Part 71 is added to read as follows:

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

Subpart A—[Reserved]

Subpart B—Permits for Early Reductions Sources

Sec.

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

Subpart A—[Reserved]

Subpart B—Permits for Early Reductions Sources

§ 71.21 Program overview.

(a) The regulations in this subpart provide for a limited, Federal, title V, permit program to establish alternative emission limitations for early reductions sources that have demonstrated qualifying reductions of hazardous air pollutants under section 112(i)(5) of the

Act. A permit issued under this subpart which establishes such an enforceable alternative emission limitation shall grant all emissions units in the early reductions source a six-year extension from otherwise applicable dates of compliance for standards promulgated under section 112(d) of the Act.

(b) After approval of a State's comprehensive permit program pursuant to title V of the Act, the Administrator may continue to issue specialty permits under this subpart only under the following circumstances:

(1) The early reductions source filed a permit application under this subpart before the State obtained approval of a comprehensive title V permit program but the permit had not been finally issued at the time of State program approval; or

(2) The early reductions source will be required to file an early reductions permit application under § 71.24(b) before a comprehensive permit application is required by the State under the approved program.

(c) When a circumstance described in paragraph (b)(1) or (b)(2) of this section occurs, the primary consideration in the Administrator's decision to issue a specialty permit is the degree of delay anticipated by deferring to the State for permit issuance.

(d) A Permit issued to an early reductions source under this subpart shall have a term not to exceed five years. Such a specialty permit shall be incorporated into a comprehensive title V permit subsequently issued to the facility containing the early reductions source, without reopening or revision of the specialty permit except as provided in § 71.26(e).

(e) Issuance of a specialty permit under this subpart does not relieve a source from an obligation to file a timely and complete comprehensive permit application as required under an approved comprehensive title V permit program.

(f) *Delegation to other permitting authorities.* (1) The Administrator may delegate to another permitting authority the responsibility to implement this permit program. Under such a delegation, the Administrator reserves the right to issue a final permit to early reductions sources that filed permit applications with the Administrator prior to the permitting authority obtaining delegation.

(2) Under any delegation, the Administrator will require that the permitting authority have enforcement authority substantially equivalent to that specified in § 70.11 of this chapter.

(3) Upon any delegation, administrative appeals of permit decisions issuing pursuant to the delegated program shall continue to be subject to the requirements of § 71.27(l).

§ 71.22 Definitions.

All terms used in this subpart not defined in this section are given the same meaning as in the Act or in subpart D of part 63 of this chapter.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Actual emissions means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the early reductions source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.

Affected States are all States:

(1) Whose air quality may be affected and that are contiguous to the State in which a permit, permit modification or permit renewal is being proposed; or

(2) That are within 50 miles of the permitted source.

Comprehensive title V permit program means a program approved by the Administrator under part 70 of this chapter or a program promulgated for EPA permit issuance under title V that encompasses all applicable requirements of the Clean Air Act.

Draft permit means the version of a permit for which the Administrator offers public participation under § 71.27.

Early reductions source means a source of hazardous air pollutants as defined pursuant to § 63.73 of this chapter.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any hazardous air pollutant.

Enforceable commitment means a document drafted pursuant to section 112(i)(5)(B) of the Act and signed by a responsible company official which commits a company to achieving before January 1, 1994 sufficient reductions in hazardous air pollutants from a designated early reductions source to qualify such source for a compliance extension under section 112(i)(5)(A) of the Act.

EPA or *Administrator* means the Administrator of the EPA or his or her designee.

Final permit means the version of a permit issued by the Administrator under this subpart that has completed all review procedures required by § 71.27.

Hazardous air pollutant means any air pollutant listed pursuant to section 112(b) of the Act.

Permit means any permit covering an existing early reductions source that is issued, amended, or revised pursuant to this subpart.

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means either of the following:

(1) The Administrator, in the case of EPA-implemented programs; or

(2) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under this subpart.

Post-reduction year means the one year period beginning with the date early reductions have to be achieved to qualify for a compliance extension under subpart D of part 63 of this chapter, unless a source has established with the Administrator an earlier one year period as the post-reduction year. For most sources, the post-reduction year would begin with the date of proposal of the first section 112(d) standard applicable to the early reductions source; however, for sources that have made enforceable commitments, it would be the year from January 1, 1994 through December 31, 1994.

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 applying for or subject to a permit 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 permitting authority;

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

(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 EPA).

Section 112(d) standard means an emission standard issued by the Administrator under section 112(d) of the Clean Air Act, as amended.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning.

§ 71.23 Applicability.

(a) *Sources covered.* The provisions of this subpart apply to an owner or operator of an existing source who is seeking a compliance extension under section 112(i)(5) of the Act and who, pursuant to part 63, subpart D, of this chapter, is required to file a permit application for the extension prior to the date a comprehensive title V permit program is approved for the State in which the existing source is located.

(b) *Covered emissions.* All hazardous air pollutant emissions from the early reductions source shall be included in permit applications and part 71 permits issued under this subpart.

§ 71.24 Permit applications.

(a) *Where to file.* To apply for a compliance extension and an alternative emission limitation under this subpart, the owner or operator of an early reductions source shall file a complete permit application with the appropriate EPA Regional Office. The owner or operator shall also send a copy of the application to the appropriate State agency; to the EPA Emission Standards Division, Mail Drop 13, Research Triangle Park, North Carolina, 27711 (attention: Early Reductions Officer); and to the EPA Office of Enforcement, EN–341W, 401 M Street, SW., Washington, DC 20460 (attention: Early Reductions Officer).

(b) *Deadlines.* (1) Permit applications under this subpart for early reductions sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(i) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(ii) March 21, 1995.

(2) Permit applications for early reductions sources subject to enforceable commitments established pursuant to § 63.75 of this chapter shall be filed no later than April 30, 1994.

(3) If the post-reduction year does not end at least one month before the permit application deadline under paragraphs (b)(1) or (b)(2) of this section, the source may file the post-reduction emissions information required under paragraph (e)(2) of this section later as a supplement to the original permit application. In such cases, this supplemental information shall be submitted to the Administrator no later than one month after the end of the post-reduction year.

(4) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the deadline for submittal of a permit application under this section.

(c) *Complete application.* To be found complete, an application must provide all information required pursuant to paragraph (e) of this section, except for the information on post-reduction emissions required under paragraph (e)(2) of this section. Applications for permit revision need supply the information required under paragraph (e) of this section only if it is related to the proposed change. Information submitted under paragraph (e) of this section must be sufficient to allow the Administrator to determine if the early reductions source meets the applicable requirements of subpart D of part 63 of this chapter. Unless the Administrator determines that an application is not complete within 45 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.26(a)(3). If, while processing an application that has been determined or deemed to be complete, the Administrator determines that additional information is necessary to evaluate or take final action on that application, the Administrator may request such information in writing and set a reasonable deadline for a response.

(d) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional or revised information as necessary to address any requirements of subpart D of part 63 of this chapter (Compliance Extensions for Early Reductions) or of this subpart that become applicable to the early reductions source after the date it filed a complete application but prior to release of a draft permit.

(e) *Required information.* The following elements are required information for permit applications under this subpart:

(1) Identifying information, including company name, telephone number, and address (or plant name, telephone number, and address if different from the company name); owner's name, telephone number, and agent; and telephone number(s) and name(s) of plant site manager/contact;

(2) All information required in § 63.74 of this chapter, including that needed to describe the early reductions source, its base year and post-reduction emissions, and supporting basis for the emissions;

(3) A statement of the proposed alternative emission limitation for hazardous air pollutants from the early reductions source on an annual basis, reflecting the emission reductions required to qualify the early reductions source for a compliance extension under subpart D of part 63 of this chapter;

(4) Additional emission limiting requirements, such as work practice standards or limitations on operation, which are necessary to assure proper operation of installed control equipment and compliance with the annual alternative emission limitation for the early reductions source;

(5) Information necessary to define alternative operating scenarios for the early reductions source or permit terms and conditions for trading hazardous air pollutant increases and decreases under § 71.25(a)(10), including any associated permit terms and conditions needed to assure compliance with the alternative emission limitation under the alternative operating scenarios or pollutant trading; and

(6) Statements related to compliance meeting the following criteria:

(i) A statement of methods proposed to determine compliance by the early reductions source with the proposed alternative emission limitation, including a description of monitoring devices and activities, emission calculation procedures, recordkeeping, and reporting requirements and test methods; and

(ii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually.

(f) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§71.25 Permit content.

(a) *Standard permit requirements.* Each permit issued under this subpart shall include the following elements:

(1) *Alternative emission limitation.* An annual alternative emission limitation for hazardous air pollutants from the early reductions source reflecting the 90 percent reduction (95 percent for hazardous air pollutants which are particulate matter) which qualified the early reductions source for a compliance extension under subpart D of part 63 of this chapter.

(2) *Additional limitations.* Additional emission limiting requirements, such as limitations on operation, work practice standards, and any other emission limiting requirements for the early reductions source necessary to assure compliance with the alternative emission limitation.

(3) *Monitoring requirements.* Each permit shall contain the following monitoring requirements:

(i) All emissions monitoring and analysis procedures or test methods necessary to assure compliance with the emission limitations established under paragraphs (a)(1) and (a)(2) of this section. Such monitoring or testing shall be consistent with the demonstration made pursuant to § 63.74 of this chapter and any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(ii) Periodic monitoring or testing sufficient to yield reliable data from the relevant time period that are representative of the early reductions source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the demonstration made pursuant to § 63.74 of this chapter. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(ii); and

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(4) *Recordkeeping requirements.* The permit shall contain recordkeeping requirements including the following, as applicable:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The date(s) analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses; and

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) *Reporting requirements.* The permit shall require the following:

(i) Submittal of reports of all required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports; and

(ii) Prompt reporting of any deviations from permit requirements, including those attributable to upset conditions as defined in the permit. Such reports shall include the probable cause of such deviations and any corrective actions or preventive measures taken. The Administrator will define "prompt" in the permit for each situation and will do so in relation to the degree and type of deviation likely to occur.

(6) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(7) Provisions stating the following:

(i) The permittee must comply with all conditions of part 71 permit issued under this subpart. A violation of an alternative emission limitation, as well as any other requirement established in a permit issued under this subpart, is enforceable pursuant to the authority of section 113 of the Act, notwithstanding any demonstration of continuing 90 percent (95 percent in the case of hazardous air pollutants which are particulates) emission reduction over the entire early reductions source. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for permit termination, revocation and reissuance, or modification;

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

(iii) The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege; and

(v) The permittee shall furnish to the Administrator, within a reasonable time, any information that the Administrator may request in writing to determine whether cause exists for revising the permit, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Administrator copies of records required to be kept by the permitee.

(8) Terms and conditions for reasonably anticipated operating scenarios identified by the early reductions source in its application as approved by the Administrator. Such terms and conditions:

(i) Shall require the early reductions source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that an emitting unit is monitored in a way that provides contemporaneous identification that a change to a particular alternate scenario has occurred, no notice to the Administrator is required. Otherwise, when such a change is made, the permittee at the beginning of the following week shall place in regular mail to the Administrator notice that a change to a particular alternate operating scenario has occurred; and

(ii) Must ensure that the terms and conditions of each such alternative scenario meet the alternative emission limitation and the requirements of this subpart.

(9) Terms and conditions, if the permit applicant requests them, for the trading of hazardous air pollutant emissions increases and decreases among emissions units within the early reductions source without permit revision or case-by-case approval of each emissions trade, provided that:

(i) Such terms and conditions include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) The changes in hazardous air pollutant emissions do not exceed the emissions allowable under the permit;

(iii) The changes in hazardous air pollutant emissions are not modifications under any provision of title I of the Act;

(iv) The Administrator determines that the emissions are quantifiable and that replicable procedures or other

practical means exist to enforce the emission trades; and

(v) The early reductions source owner or operator provides the Administrator written notification at least 7 days in advance of the proposed changes and includes in the notification a description of the change in emissions that will occur, when the change will occur, and how the increases and decreases in emissions will comply with the alternative emission limitation and other terms and conditions of the permit.

(b) *Federally enforceable requirements.* All terms and conditions in a permit issued under this subpart are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All permits issued under this subpart shall contain the following elements with respect to compliance:

(1) Consistent with paragraphs (a)(3), (a)(4), and (a)(5) of this section, testing, monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required to be submitted by a permit shall contain a certification by a responsible official that meets the requirements of § 71.24(f).

(2) Inspection and entry provisions that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Administrator or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where the early reductions source is located or emissions-related activity is conducted, or where required records are kept;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with the permit.

(3) Requirements for compliance certification with terms and conditions contained in the permit, including the alternative emission limitation. Permits shall include each of the following:

(i) The frequency (not less than annually) of submissions of compliance certifications;

(ii) Consistent with paragraph (a)(3) of this section, a means for monitoring the compliance of the early reductions source with its alternative emission limitation;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the early reductions source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the Administrator may require to determine the compliance status of the early reductions source;

(iv) A requirement that all compliance certifications be submitted to the Administrator or the Administrator's designated agent; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(4) Such other provisions as the Administrator may require.

(d) *Permit shield.* (1) The Administrator will expressly include in a permit issued pursuant to this subpart a provision stating that compliance with the conditions of the permit shall be deemed compliance with part 63, subpart D, of this chapter (the Early Reductions Rule), as of the date of permit issuance.

(2) A permit shield may be extended to all permit terms and conditions for alternate operating scenarios pursuant to paragraph (a)(9) of this section or that allow increases and decreases in hazardous air pollutant emissions pursuant to paragraph (a)(10) of this section.

(3) Nothing in this paragraph (d) or in any permit issued pursuant to this subpart shall alter or affect the following:

(i) The provisions of sections 112(r) and 303 of the Act (emergency orders);

(ii) The liability of an owner or operator of an early reductions source for any violation of applicable requirements prior to or at the time of permit issuance; or

(iii) The ability of the Administrator to obtain information from an early reductions source pursuant to section 114 of the Act.

(e) *Emergency provision.*—(1) *Definition.* An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the early reductions source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the early reductions source to exceed an emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such an emission limitation if the conditions of paragraph (e)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitation, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the Administrator within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(5)(ii) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

§ 71.26 Permit issuance, reopenings, and revisions.

(a) *Action on application.* (1) A permit or permit revision may be issued only if all of the following conditions have been met:

(i) The Administrator has received a complete application for a permit or permit revision;

(ii) The requirements for public participation under § 71.27 have been followed; and

(iii) The conditions of the proposed permit or permit revision meet all the requirements of § 71.25 and provide for compliance with an alternative emission limitation reflecting the emissions reduction which qualified the early reductions source for a compliance

extension under part 63, subpart D, of this chapter.

(2) The Administrator will take final action on each permit application (including a request for permit revision) within 12 months after receiving a complete application, except that final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the Administrator under § 71.24(c).

(3) The Administrator will promptly provide notice to the applicant of whether the application is complete. Unless the Administrator requests additional information or otherwise notifies the applicant of incompleteness within 45 days of receipt of an application, the application shall be deemed complete. For revisions that qualify as administrative amendments and are processed through the procedures of paragraph (c) of this section, a completeness determination need not be made.

(4) If a source submits a timely and complete application for permit issuance, the source's failure to have a title V permit for purposes of any requirements under section 112 pertaining to the early reductions source is not a violation of this part until the Administrator takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(3) of this section, and as required by § 71.24(d), the applicant fails to submit by the deadline specified in writing by the Administrator any additional information identified as being needed to process the application.

(b) *Permit renewal and expiration.* (1) Permits issued under this subpart shall not be renewed. Permit renewal for expiring permits issued under this subpart shall be accomplished according to the requirements of title V of the Act for comprehensive permits for the facility containing the early reductions source.

(2) Except as specified in paragraph (b)(3) of this section, permit expiration terminates the early reductions source's right to operate.

(3) If, consistent with the requirements of title V of the Act, a timely and complete application for a comprehensive title V permit for the facility containing the early reductions source has been submitted but the permitting authority has failed to issue or deny the comprehensive permit prior to expiration of a permit issued under this subpart, then the existing permit for the early reductions source shall not expire until the comprehensive title V permit for the facility has been issued or denied.

(c) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of an early reductions source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority; or

(v) Incorporates any other type of change which the Administrator has determined to be ministerial in nature and, therefore, similar to those in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(2) *Administrative permit amendment procedures.* Administrative permit amendments may be made to a permit issued under this subpart using the following procedures:

(i) The source shall submit to the Administrator an application containing a proposed addendum to the source's permit. The application shall demonstrate how the proposed change meets one of the criteria for administrative amendments set forth in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, and include certification by the responsible official consistent with § 71.24(f) that the change is eligible for administrative amendment procedures. The addendum shall:

(A) Identify the terms of the part 71, subpart B permit the source proposes to change;

(B) Propose new permit terms consistent with the provisions of this subpart applicable to the change;

(C) Designate the addendum as having been processed under the procedures of this paragraph (c); and

(D) Specify that the addendum will be effective 60 days from the date of the Administrator's receipt, unless the Administrator disapproves the change within such period.

(ii) The Administrator will allow the source to implement the requested change immediately upon making all required submittals, including the proposed addendum.

(iii) The proposed addendum will become effective 60 days after the Administrator receives the submittal, provided the Administrator has not disapproved the request in writing before the end of the 60-day period. The Administrator shall record the change by attaching a copy of the addendum to the part 71, subpart B permit.

(iv) If the Administrator disapproves the change, he or she shall notify the source of the reasons for the disapproval in a timely manner. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect.

(v) The process in this paragraph (c) may also be used for changes initiated by the Administrator that meet the criteria under paragraphs (c)(1) (i), (ii), and (iv) of this section. For such changes, the Administrator will notify the source of the proposed change and its effective date, and shall attach a copy of the change to the existing permit. On the effective date of the proposed change, the source shall comply with the provisions of the proposed change.

(vi) The permit shield under § 71.25(d) may not extend to administrative amendments processed under this paragraph (c)(2).

(d) *Permit revision procedures*—(1) *Criteria.* Permit revision procedures shall be used for applications requesting permit revisions that do not qualify as administrative amendments. Nothing in this paragraph (d) shall be construed to preclude the permittee from making changes consistent with this subpart that would render existing permit compliance terms and conditions irrelevant.

(2) Permit revisions shall meet all requirements of this subpart, including those for applications, public participation, and review by affected States, as they apply to permit issuance. The Administrator will complete review on permit revisions within 9 months after receipt of a complete application.

(e) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened. A permit shall be reopened and revised under any of the following circumstances:

(i) The Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emission limits or other terms or conditions of the permit.

(ii) The Administrator determines that the permit must be revised to assure compliance with the alternative emission limitation.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings under paragraph (e)(1) of this section shall not be initiated before a notice of such intent is provided to the early reductions source by the Administrator. Such notice will be provided at least 30 days in advance of the date that the permit is to be reopened, except that the Administrator may provide a shorter time period in the case of an emergency.

(f) *EPA review under State programs for issuing specialty permits.* (1) If the Administrator approves a State program for the implementation of this subpart, the State program shall require that the Administrator receive a copy of each permit application (including any application for permit revision) each proposed permit, and each final permit issued pursuant to this subpart. The State program may require that the applicant provide a copy of any permit application directly to the Administrator.

(2) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with requirements under this subpart or part 63 of this chapter. If the Administrator objects in writing within 45 days of receipt of a proposed permit and all necessary supporting documentation, the State shall not issue the permit.

(3) Any EPA objection to a proposed permit will include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.

(4) Failure of the State to do any of the following also shall constitute grounds for an objection:

(i) Comply with paragraph (f)(1) of this section;

(ii) Submit any information necessary to review adequately the proposed permit; or

(iii) Process the permit under procedures approved to meet paragraph (f) of this section.

(5) If the State fails, within 90 days after the date of an objection under paragraph (f)(2) of this section, to revise and submit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of this subpart.

(6) *Public petitions to the Administrator.* Within 60 days after expiration of the Administrator's 45-day review period, any person may petition the Administrator in writing to make an objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for and consistent with § 71.27, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the permitting authority shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection. If the permitting authority has issued a permit prior to receipt of an EPA objection under this paragraph, the Administrator will revise, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR 70.7(g)(4) or (g)(5)(i) except in unusual circumstances, and the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

§ 71.27 Public participation and appeal.

All permit proceedings, including preparation of draft permits, initial permit issuance, permit revisions, and granted appeals, shall provide adequate procedures for public participation, including notice, opportunity for comment, a hearing if requested, and administrative appeal. Specific procedures shall include the following:

(a) *Revision, revocation and reissuance, or termination of permits.* (1) Permits may be revised, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Administrator's initiative. However, permits may only be revised, revoked and reissued, or terminated for the reasons specified in §§ 71.25(a)(7) and 71.26(e). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin revision, revocation and reissuance, or termination proceedings under paragraph (a)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) (i) Except in the case of administrative amendment of a permit, if the Administrator tentatively decides to revise or revoke and reissue a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall prepare a draft permit under paragraph (b) of this section incorporating the proposed changes. The Administrator may request additional information and, in the case of a revised permit, shall require the submission of an updated application. In the case of revoked and reissued permits, the Administrator shall require the submission of a new application.

(ii) In a permit revision under this subsection, only those conditions to be revised shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unrevised permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(4) If the Administrator tentatively decides to terminate a permit under §§ 71.25(a)(7) and 71.26(e), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under paragraph (b) of this section. A notice of intent to terminate shall not be issued if the Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 71.21(e).

(5) Any request by the permittee for revision to an existing permit shall be treated as a permit application and shall be processed in accordance with all requirements of § 71.24.

(b) *Draft permits.* (1) Once an application is complete, the Administrator shall tentatively decide

whether to prepare a draft permit or to deny the application.

(2) If the Administrator tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this subsection. If the Administrator's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (b)(4) of this section.

(3) If the Administrator decides to prepare a draft permit, he or she shall prepare a draft permit that contains the permit conditions under § 71.25.

(4) All draft permits prepared under this subsection shall be publicly noticed and made available for public comment. The Administrator shall give notice of opportunity for a public hearing, issue a final decision and respond to comments. For all early reductions permits, an appeal may be taken under paragraph (l) of this section.

(c) *Statement of basis.* The Administrator shall prepare a statement of basis for every draft permit. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(d) *Public notice of permit actions and public comment period.*—(1) *Scope.* (i) The Administrator shall give public notice that the following actions have occurred:

(A) A permit application has been tentatively denied under paragraph (b)(2) of this section;

(B) A draft permit has been prepared under paragraph (b)(3) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section;

(D) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required in the case of administrative permit amendments, or when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.* (i) Public notice of the preparation of a draft permit or permit revision (including a notice of intent to deny a permit or permit revision application) shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit or permit revision and the two notices may be combined.)

(iii) The Administrator shall provide such notice and opportunity for participation to Affected States on or before the time that the Administrator provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph (d) may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Any other agency which the Administrator knows has issued or is required to issue any other permit under the Clean Air Act for the same facility or activity;

(C) Affected States and Indian Tribes;

(D) Affected State and local air pollution control agencies, the chief executives of the city and county where the early reductions source is located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Administrator may delete from the list the name of any person who fails to respond to such a request.);

(F) Any unit of local government with authority for regulating air pollution and having jurisdiction over the area where the early reductions source is located and to each State agency having any authority for regulating air pollution under State law with respect to the operation of such source.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the early reductions source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the Administrator or the Administrator's designated agent processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the Administrator that are relevant to the permit decision;

(F) A brief description of the comment procedures required by paragraphs (e) and (f) of this section and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

(G) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(4)(i) of this section, the public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) Reference to the date of previous public notices relating to the permit;

(B) Date, time, and place of the hearing; and

(C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) In addition to the general public notice described in paragraph (d)(4)(i) of this section, all persons identified in paragraphs (d)(3)(i)(A), (B), and (C) of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

(e) *Public comments and requests for public hearings.* During the public

comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit or permit revision and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The Administrator will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1)(i) The Administrator shall hold a hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit or permit revision.

(ii) The Administrator may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(iii) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(2) Whenever a public hearing is held, the Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data concerning the draft permit or permit revision. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this paragraph (g). Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.)

(h) *Reopening of the public comment period.* (1)(i) The Administrator may order the public comment period reopened if the procedures of this paragraph (h) could expedite the decisionmaking process. When the public comment period is reopened under this paragraph (h), all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Administrator's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (h)(1)(ii) of this section, set by the Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Administrator.

(ii) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of paragraph (h)(1)(i) of this section shall apply.

(iii) On his or her own motion or on the request of any person, the Administrator may direct that the requirements of paragraph (h)(1)(i) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1)(i) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(iv) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted to the extent they appear necessary.

(2) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Administrator may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, a fact sheet or revised fact sheet, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(3) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(4) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the Administrator shall issue a final permit decision. The Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this paragraph (i), a final permit decision means a final decision to issue, deny, revise, revoke and reissue, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision unless:

(i) A later effective date is specified in the decision; or

(ii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the Administrator shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are

raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The Administrator will notify in writing any Affected State of any refusal to accept recommendations for the permit that the State submitted during the public or Affected State review period.

(k) *Administrative record for final permit.* (1) The Administrator shall base final permit decisions on the administrative record defined in this paragraph (k).

(2) The administrative record for any final permit shall consist of:

(i) All comments received during the public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments required by paragraph (j) of this section and any new materials placed in the record under paragraph (j) of this section;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis; and

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by EPA. The record shall be complete on the date the final permit is issued.

(4) This section applies to all final permits.

(5) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section ("response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this subsection begins with the service of notice of the Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this subpart. The Board must act under this paragraph within 30 days of the service date of notice of the Administrator's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l) (1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to the seeking of judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Administrator:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Neither the filing of a petition for review of any condition of the permit or permit decision nor the granting of an appeal by the Environmental Appeals Board shall stay the effect of any contested permit or permit condition.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–008–F]

RIN 0938–AD79

Medicare Program; Appeal Rights and Procedures for Beneficiaries Enrolled in Prepaid Health Care Plans

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

ACTION: Final rule.

SUMMARY: This final rule modifies or establishes administrative review procedures for Medicare beneficiaries enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). Specifically, it requires that an HMO or CMP

complete a reconsideration, requested by a Medicare enrollee for denied services or claims, within 60 days from the date of receipt of the reconsideration request; extends to HMO and CMP enrollees the right to request immediate review by a Utilization and Quality Control Peer Review Organization of an HMO's, CMP's, or hospital's determination that an inpatient hospital stay is no longer necessary; and requires an HCPP to establish administrative review procedures for its Medicare enrollees who are dissatisfied with decisions on denied services or claims.

DATES: These regulations are effective December 21, 1994. HMOs and CMPs must comply with the requirements of this final rule beginning February 21, 1995. HCPPs must comply with the requirements of this final rule beginning May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen Miller, (202) 619–0129.

SUPPLEMENTARY INFORMATION:

I. General Background

Payment for services provided to Medicare beneficiaries under title XVIII of the Social Security Act (the Act) is generally made on a fee-for-service basis or on a prepayment basis. This rule deals with Medicare services provided to beneficiaries by entities paid on a prepayment basis. We refer to these entities collectively as "prepaid health care organizations." Under the prepayment method, health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs), enter into contracts or agreements with us to provide a range of services to Medicare beneficiaries who voluntarily enroll in these plans.

Section 1876 of the Act provides the authority for us to enter into contracts with HMOs and CMPs to furnish Medicare covered services to beneficiaries and specifies the requirements these organizations must meet. Contracting HMOs and CMPs may be paid on either (1) a risk basis, under which they are paid a prospectively determined per capita monthly payment, or (2) a cost basis under which interim per capita payments are made on the basis of a budget and a retrospective cost settlement occurs to reflect the reasonable costs actually incurred by the HMO or CMP for the covered services it furnishes to enrolled members.

Section 1833 of the Act provides the basis for regulations under which we enter into written agreements with HCPPs to furnish or arrange to have furnished covered Medicare Part B services to a defined population on a prepayment basis.

II. Additional Background and Provisions of the Proposed Rule

On October 7, 1992, we published a proposed rule (57 FR 46119) in which we proposed to amend the Medicare regulations governing administrative review rights and procedures for Medicare enrollees in prepaid health care organizations to: (1) Impose a 60-calendar-day limit for an HMO or CMP to complete a reconsideration requested by a Medicare enrollee (or authorized representative) for denied services or claims; (2) permit an HMO or CMP enrollee (or authorized representative) to request immediate Utilization and Quality Control Peer Review Organization (PRO) review of an HMO, CMP, or hospital notice of a determination that an inpatient hospital stay is no longer necessary; and (3) require HCPPs to establish administrative review procedures for Medicare enrollees similar to those that we require HMOs and CMPs to establish for Medicare enrollees.

A. Time Limit on Reconsiderations

Section 1876(c)(5)(A) of the Act requires a contracting HMO or CMP to establish procedures for hearing and resolving grievances between the organization and its Medicare enrollees. Section 1876(c)(5)(B) provides specific administrative and judicial review rights to Medicare enrollees who are dissatisfied with determinations by the HMO or CMP regarding services and claims. These rights are similar to those available to beneficiaries in the fee-for-service system, except that, under the existing regulations at 42 CFR 417.614 and 417.620, the initial level of review is by the HMO or CMP rather than by a PRO, intermediary, or carrier. Issues that are subject to the full scope of administrative and judicial review are those in which beneficiaries believe they: (1) Have been denied access to a service to which they are entitled, or (2) are required to pay an amount that is the responsibility of the HMO or CMP. (Other issues are only subject to the HMO's or CMP's internal grievance procedures.)

Regulations at §§ 417.600 through 417.638 describe the administrative and judicial review process. Under the first step of the process, the rules provide that the HMO or CMP must make a timely determination and notify the beneficiary of the reasons for the determination. A determination regarding a request for payment must be made within 60 days of receiving the claim. If the decision is unfavorable (in whole or in part), the beneficiary (or his or her authorized representative) may request that the HMO or CMP reconsider the decision. (The beneficiary must request reconsideration before proceeding to the next step in the review process.) An organization may issue a reconsidered determination on a case only if the reconsidered determination is entirely favorable to the beneficiary. If the organization reaffirms its denial of payment or services, in whole or in part, the organization may not issue a reconsidered decision to the beneficiary Instead, the organization must prepare a written explanation and refer the case to us, along with a justification for its initial denial, so that we may make a new and independent determination concerning coverage of the services at issue. This step is considered part of the reconsideration process. If our reconsideration determination is not fully favorable to the beneficiary, the beneficiary has a right to request a hearing before an administrative law judge (ALJ) of the Social Security Administration if the amount remaining in controversy is $100 or more. If the ALJ hearing does not result in a fully favorable determination, the beneficiary may request Appeals Council review of the ALJ decision. Following the administrative review process, the beneficiary is entitled to judicial review of the final determination if the amount remaining in controversy is $1,000 or more.

Existing regulations do not establish time limits for an HMO or CMP to complete a reconsideration. A beneficiary may not proceed to the next level of administrative review, however, until the HMO or CMP issues its decision or refers the matter to us. Therefore, we proposed to amend § 417.620 ("Responsibility for reconsideration; time limits") to require the following:

- That an HMO or CMP act on the beneficiary's reconsideration request within 60 calendar days from the date of receipt of the request.
- That, if the decision made by the organization is entirely favorable to the beneficiary, the organization so notify the beneficiary within the 60-calendar-day period.
- That, if the organization cannot make a decision that is fully favorable to the beneficiary, the organization must submit the case file to us (or our designated agent) within the 60-calendar-day period described above.

B. PRO Review of Decisions for Hospital Discharges

Section 1154(e) of the Act, as amended by section 9351 of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), provides Medicare beneficiaries with the right to an immediate review by a PRO and, in some cases, certain financial protections when a hospital, with the concurrence of the attending physician, determines that the beneficiary no longer requires inpatient hospital care. To exercise the immediate review right, after receiving the hospital's notice of noncoverage, the beneficiary must request (by telephone or in writing) that the PRO review the validity of the hospital's decision. The beneficiary must make the request by noon of the first working day after receipt of the notice. The PRO then must determine within 1 full working day of the request (and receipt of pertinent information and/or records from the hospital) the appropriateness of the hospital's decision that the beneficiary no longer requires inpatient hospital care. The hospital cannot charge the beneficiary for the cost of additional hospital days until noon of the day after receipt of the PRO's determination that the hospital's decision was correct.

Under current law, if the hospital (rather than the HMO or CMP) sends the discharge notice, the beneficiary is entitled to request immediate review by a PRO whether or not he or she is enrolled in an HMO or CMP. However, while a beneficiary enrolled in an HMO or CMP may be protected from being charged by the hospital, he or she is not necessarily protected from potential financial liability. If the PRO upholds the hospital's notice of noncoverage, there is no regulation prohibiting the HMO or CMP from billing the beneficiary for the extra days of care while the PRO is reviewing the case if the extra days result in additional costs to the HMO or CMP. (Depending on the payment arrangement with the hospital, it is possible that the HMO or CMP will not incur any additional costs by virtue of the patient's additional days in the hospital. For example, if there is no contract between the HMO and the hospital, the hospital may not charge more than the amount Medicare would pay. Under the prospective payment system (PPS), that amount remains the same regardless of the length of the hospital stay, unless outlier payment is involved, that is, additional payment for covered services for extended length-of-stay cases. Similarly, a contract between an HMO and a hospital might provide that the hospital is paid on a basis similar to PPS, rather than on a per diem basis.)

If the HMO or CMP, rather than the hospital, makes the determination of noncoverage, the current regulations do not specifically afford an immediate PRO review right to the enrollees. Therefore, we proposed to amend § 417.440 ("Entitlement to health care services from an HMO or CMP"), § 417.454 ("Charges to Medicare enrollees"), and § 417.604 ("General Provisions") and add a new § 417.605 ("Immediate PRO review of a determination of noncoverage of inpatient hospital care") to provide the Medicare HMO or CMP enrollee with the same administrative review rights and financial protection as are available to beneficiaries under the fee-for-service system.

We proposed to require that an HMO or CMP that has not delegated the discharge decision to the hospital and attending physician: (1) Have the concurrence of the attending physician before making a determination that an enrollee no longer needs inpatient hospital care; and (2) give the beneficiary a written notice of noncoverage that specifies the effective date of his or her liability, states why the HMO or CMP believes he or she no longer requires a hospital level of care, and explains immediate review procedures.

We proposed to revise the beneficiary administrative review procedures to offer an immediate review by the PRO with which the hospital has an agreement under § 466.78. We proposed to adopt the same timeframes for immediate PRO reviews for HMO and CMP enrollees that are applicable to fee-for-service beneficiaries. Upon receiving a written notice from the HMO or CMP or a hospital of a determination that an inpatient hospital stay is no longer necessary, the enrollee (or authorized representative) would have until noon of the first working day after receipt of the notice to file (by telephone or in writing) a request for immediate PRO review. The PRO would notify the HMO or CMP that an appeal has been filed and require the HMO or CMP to provide any pertinent records or information by close of business of the first working day immediately following the day the beneficiary made the appeal. Further, in response to a request from the HMO or CMP, the hospital would be required to submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request. The PRO would also solicit the views of the enrollee who requested immediate PRO review (or the enrollee's authorized representative). The PRO would have 1 working day after receipt of the information from the HMO or CMP to make a determination. The HMO or CMP would be financially liable for the costs of the hospital stay until noon of the calendar day following receipt of the PRO determination.

In addition, we also proposed to prohibit the HMO or CMP from billing the Medicare beneficiary for the added cost of hospital days during the immediate review process. An enrollee who requests immediate PRO review would not be entitled to any subsequent review, under the HMO's or CMP's administrative review process, of the issue of whether hospitalization was still needed. However, the PRO determination would be subject to appeal under the administrative and judicial review process set forth in 42 CFR part 473 (that is, PRO reconsiderations and hearings and judicial review of PRO reconsiderations). As under the current fee-for-service system, the beneficiary who requests that a PRO reconsider its determination would not be protected from financial liability.

Under the proposed rule, the hospital would not be required to be a concurring party in a discharge decision if the HMO or CMP issues the notice of noncoverage. However, the hospital could submit the request to the PRO for immediate review on behalf of the HMO or CMP enrollee. We proposed to clarify that, with one exception, the HMO or CMP is financially responsible for the costs of the hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination. Under the exception, a hospital may not charge the HMO or CMP (or the beneficiary) for the costs of the continued hospital stay during the PRO review process if the hospital files the request for immediate PRO review on behalf of a beneficiary and the PRO upholds the noncoverage determination made by the HMO or CMP.

C. Providing Administrative Review Rights to HCPP Members

Section 1833(a)(1)(A) of the Act provides that an organization that furnishes services on a prepayment basis may elect to receive payment for Part B services on a reasonable cost basis rather than a reasonable charge basis. There is no indication that the Congress intended to deny Medicare beneficiaries enrolled in these organizations (referred to in these regulations as health care prepayment plans (HCPPs)) their full administrative review rights under section 1869 of the

Act because they receive services through an organization that chooses this alternate payment option. The regulations at 42 CFR part 417, subpart D, applicable to HCPPs, do not, however, specifically address administrative review rights for Medicare enrollees of HCPPs.

The fact that existing regulations do not specifically provide for administrative review of HCPP decisions is an oversight we proposed to correct by amending § 417.801 ("Agreements between HCFA and health care prepayment plans") and adding new §§ 417.830 through 417.840 to establish administrative review procedures for Medicare enrollees of HCPPs who are dissatisfied with denied services or claims. We proposed to adopt under these sections administrative review procedures for HCPP enrollees that are the same as those for HMO and CMP enrollees.

D. Technical Changes

We also proposed to make several clarifying technical changes to the regulations relating to administrative reviews for HMO or CMP enrollees:

- Subpart Q, §§ 417.600, 417.604, 417.606, 417.608, 417.610, 417.612, 417.614, 417.616, 416.618, 416.620, 417.622, and 417.638—We proposed to change the term "initial determination" to "organization determination" to distinguish between a determination made by the HMO or CMP and one made by us. We also proposed to delete references to carriers and intermediaries making determinations on behalf of HMOs and CMPs. Carriers and intermediaries now make only fee-for-service determinations.
- Sections 417.604 and 417.610—We proposed to revise § 417.604(a)(4) to clarify that physicians and other individuals who furnish items or services under arrangements with an organization do not have a right to appeal under the regulations. We proposed to make a conforming change to § 417.610(b).
- Section 417.614—We proposed to clarify the language by making a distinction between an original determination and a revised or reopened determination.
- Section 417.630—We proposed to clarify that the reference to the "amount in controversy" as a condition for a party to request a hearing is the amount "remaining" in controversy, not the amount of the total bill. We also proposed to add a phrase to clarify that if beneficiaries combine bills to meet the amount in controversy requirements, they can use both Part A and Part B bills.

III. Analysis of and Response to Public Comments

We received timely comments from 16 commenters. The commenters included HMOs, a CMP, national and local professional associations, a State department of health, and consumer advocacy groups.

A. Time Limits

Comment: While many of the commenters supported the proposed time limit for issuing reconsideration determinations, two commenters expressed concern about the initial organization determination. The concern is that HMOs and CMPs deny (or delay) referrals and other services without providing a written notice and, because there is no record of a denial or a decision date, it is unclear whether and when a request for reconsideration may be filed. One commenter proposed that written notices be given for all services granted or denied.

Response: Regulations at § 417.608(c) state that failure by an HMO or CMP to make timely notification of an adverse organization determination constitutes an adverse determination and may be appealed. In addition, no provision of § 417.616 ("Request for reconsideration") prevents or impedes a Medicare enrollee from filing a request for reconsideration if the HMO or CMP failed to provide the enrollee with written notice that a service is denied. Thus, if a Medicare enrollee maintains that he or she is being denied a covered service but is unable to obtain an explicit denial, we believe that the regulations permit the enrollee to move to the next step of the appeals process and file a request for reconsideration.

Written notices for all decisions to grant or deny services, as proposed by the commenter, would require an inestimable amount of additional paperwork, with marginal benefit. This requirement would also eliminate the current flexibility of the regulations which allows enrollees to file for a reconsideration without a written denial.

Comment: Two commenters expressed concern that the Medicare appeals process does not recognize the need for expedited determinations in time-sensitive medical situations. One commenter proposed incorporation of an expedited appeals process for denied services, depending on the relative urgency of the perceived need for the service.

Response: We recognize that there are medical situations in which outcomes are greatly affected by the promptness of treatment. We also recognize that our regulations do not specifically address these situations. In order to establish an expedited process for organization determinations, however, we would need the benefit of proposed rulemaking and public comment. We will consider the need for regulations in this area in the near future. In the interim, we believe that regulations at § 417.608(c), as noted above, permit the Medicare enrollee some flexibility in assuming a service is denied and seeking a timely reconsideration. Medicare enrollees also may obtain denied services outside the plan and use the appeals process to pursue payment, or complain in writing or by telephone to the HCFA regional office for the area. Complaints to the regional office are not intended to, and usually will not, circumvent the appeals process, but introduce Federal followup and tracking of HMO/CMP responses in these situations.

Even in the absence of specific regulatory requirements, we expect Medicare contracting HMOs and CMPs to expedite any initial coverage determination and reconsideration if a delay in the decision, and a subsequent postponement or suspension of treatment, could have serious, adverse consequences on the health status of the beneficiary (for example, cause impairment of any bodily function and/or serious dysfunction of any bodily organ or part).

Comment: Two commenters believed that the 60-day time period frequently is not long enough, and that the time limit should apply only to "clean cases" or should begin after all materials are received.

Response: The 60-day limit is consistent with the time period allowed in making the initial organization determination, is supported as reasonable by most commenters on the proposed rule, and should be adequate in most circumstances. Nonetheless, while we do not agree with the specific suggestion of the commenters, we are amending § 417.620 (Responsibility for reconsideration; time limits) to allow extensions for "good cause." The "good cause" extension authority will not diminish the new time limit requirement, but will allow for unusual circumstances such as natural disasters or circumstances that make it difficult or impossible for the enrollee to provide necessary information in a timely way. This will benefit both the enrollee and the health plan.

Comment: Several commenters believed that a time limit similar to the 60-day limit on reconsiderations that is placed on HMOs/CMPs should be placed on HCFA's reconsiderations. In support of this position, one commenter

cited the stipulated settlement in the case of *Levy* v. *Sullivan* concerning HMO appeal delays.

Response: We do not accept this comment. In order to provide meaningful review of the HMO's/CMP's decision, we (or the independent reviewer with which we contract) must have the complete record of the dispute. When the HMO/CMP conducts a reconsideration of its original decision, it presumably has all of the documentation it considered relevant to its initial decision. However, our experience demonstrates that the independent reviewer must often request that additional material be submitted. Our current policy allows the HMO time to obtain the additional information. If the information is not received, the contractor will make its decision based on the record available. Since legitimate delays may occur, however, we believe it would be to the parties' advantage to have a flexible deadline for the independent review.

We are, on the other hand, concerned that beneficiaries not suffer undue financial hardship during an appeal. We monitor the activities of the contractor and the status of reconsiderations as part of our overall monitoring of compliance with program requirements. Our contract with the independent reviewer also contains a 30-day timeliness standard for clean claims, as stipulated in *Levy* v. *Sullivan*, Civ. No. 88–3271 DT (TX) (S.D. Cal., filed March 13, 1989). That agreement, however, did not require that this be incorporated into regulations and does not preclude us from revising the contract to reflect intervening circumstances.

Comment: One commenter suggested that the 60-day period begin with the date of receipt of the request by the health plan.

Response: Section 417.620(c) specifies that the HMO must act within 60 calendar days "from the date of receipt of the request for reconsideration."

Comment: One commenter suggested that the appeals regulations explain the consequences of failure to meet the 60-day time limit or to issue written determinations. One commenter urged a system of intermediate sanctions for HMOs/CMPs that fail to make timely organization or reconsideration determinations.

Response: We agree with the commenter that there should be consequences for failure to provide determinations in a timely manner and within established time standards. As explained in an earlier response to a comment, we believe that the regulations at § 417.608(c) permit a Medicare enrollee to move to the reconsideration process if timely notification of an adverse organization determination is not made. To ensure that the 60-day limit serves as a time ceiling for this stage of the appeals process, we are adding a provision to § 417.620. This provision clarifies that failure to complete the reconsideration within the time allowed, or to obtain a "good cause" extension from us, constitutes an adverse determination and the appeals file must be submitted to us.

Regulations were published on July 15, 1994 (59 FR 36072) that allow us to impose intermediate sanctions and civil money penalties for a number of performance violations on the part of HMOs and CMPs. Though the sanction and penalty authorities are untested at this time, we will be assessing how information from the appeals process may be used to improve plan performance or initiate a sanctions process in response to suspected violations such as a substantial failure to provide required medically necessary services and the failure adversely affects the enrollee.

B. Requests for Immediate PRO Review of Decisions for Hospital Discharges

Comment: While many of the commenters supported the proposed provision, several commenters opposed it on several accounts, including that it would have an adverse economic impact on HMOs/CMPs, that adequate enrollee protections already exist, and that it would interfere with the patient-physician relationship.

Response: We are aware that the right to immediate PRO review may add to the costs of caring for Medicare enrollees. It is difficult to assess the degree to which this will affect HMOs and CMPs, because many Medicare-contracting plans delegate the discharge decision to the physician and hospital. In these circumstances, PRO review has already been in effect and no additional financial impact is anticipated. In addition, some HMOs/CMPs pay hospitals on a diagnosis-related group basis and hospital payments may not be affected. In circumstances where the HMO/CMP makes the discharge decision in conjunction with its affiliated physicians and pays the hospital on a per diem basis and thus faces additional hospital charges, we do not concur with the commenters' position, that is, that the HMO/CMP not be held financially accountable for the additional hospital days. For risk-contracting HMOs/CMPs, the Medicare payment rate is based on fee-for-service costs, and the costs of extra hospital days during the PRO review process are incorporated into these calculations. Therefore, the average cost for hospital inpatient days during the PRO review period in the HMO's/CMP's area are already included in the adjusted average per capita cost rate. Since all cost-contracting HMOs/CMPs currently choose to have the hospital seek payment directly from the fiscal intermediary, there should be no additional costs to the health plan.

While we do not have evidence of early discharge complaints against HMOs and CMPs, it is possible that some Medicare enrollees are dissatisfied but have no mechanism for expressing it. Moreover, in the interests of due process, we believe it is important to provide beneficiaries comparable rights whether they do or do not enroll in an HMO/CMP, and whether or not they have the need to take advantage of those rights. Moreover, if there really are no complaints, then this will not be a burdensome requirement on HMOs and CMPs.

Lastly, in response to concern about the patient-physician relationship, there has been no problem of this type arising out of the right to immediate PRO review under the fee-for-service program. Also, HMOs/CMPs, because they coordinate their enrollees' total health care needs, generally have a strong relationship between their Medicare enrollees and physicians (as well as other health plan staff). We believe that HMOs/CMPs that maintain positive communications and relationships with their Medicare enrollees will not experience any difficulty in this area.

Comment: One commenter was concerned about frivolous claims and the potential incentives to appeal to the PRO for review. This commenter suggested that either the Medicare program or the enrollee be responsible for the expense of extra hospital days if the noncoverage decision is upheld.

Response: Our experience with immediate PRO review of hospital discharge (noncoverage) decisions does not support a concern about frivolous claims. Relative to the number of discharges under the Medicare fee-for-service program, the number of appeals to the PRO is extremely small. We expect that HMOs/CMPs, because they are more involved in the health care of their enrollees, would have a similar experience, and may even experience fewer PRO appeals if they communicate effectively with their enrollees and have adequate safeguards against premature discharges.

With respect to financial liability for extra hospital days, the adjusted average per capita cost calculation includes

these costs. We would be overpaying if a separate payment was made to plans for these charges.

We will not shift these costs to the Medicare enrollee because fee-for-service beneficiaries are already protected, and we believe that beneficiaries should be treated similarly whether they choose managed care or fee-for-service. We do not believe this difference in protections should have to be a factor in the beneficiaries' choice. Further, we believe that financial responsibility for extra hospital days related to an appeal would be a strong disincentive to any beneficiary who questions the appropriateness of a discharge decision. Such a requirement would undermine the intent of an appeals process.

Comment: One commenter stated that we mischaracterized the HMO's and CMP's responsibility for discharge decisions in the preamble of the proposed rule. The commenter stated that the final authority for discharge rests with the physician and that HMOs/CMPs cannot discharge enrollees from a hospital.

Response: We agree that the preamble should have referred to "noncoverage" decisions by the HMO/CMP rather than "discharge" decisions. The right to immediate PRO review affects *noncoverage* decisions in cases in which the HMO/CMP and its affiliated physicians agree that a Medicare enrollee no longer requires hospitalization and the hospital does not make the noncoverage decision. We also believe that the use of the term "attending physician" in proposed §§ 417.440 (f)(2) and (f)(4) (which require concurrence of a physician in the discharge decision) does not clearly express the relationship between the HMO/CMP and its affiliated physician providers. Therefore, in the final rule we have removed the term "attending physician" and inserted "its affiliated physician responsible for the hospital care of the enrollee, or other physician as authorized by the HMO or CMP" in its place.

Comment: One commenter stated that the attending physician should be allowed to represent his or her patients and request PRO review of noncoverage decisions.

Response: Usually, the HMO/CMP-affiliated physician makes the decision that a Medicare enrollee is ready for discharge. Some HMOs/CMPs make use of an extended treatment team, such as case managers, discharge coordinators, or utilization review coordinators, and a member of this team may believe an enrollee is ready for discharge when the physician does not. In these situations, the health plan's internal procedures will provide guidance for making the discharge decision. HMO/CMP physicians have legal arrangements or contracts with their health plans, and must abide by the plan's procedures. We support the HMO/CMP structure for the delivery of health care, and we would not support a policy that undermines the nature of managed care operations.

In cases in which the physician caring for a hospitalized enrollee is not under contract or bound by the terms of an arrangement with an HMO/CMP, the physician could represent the patient.

Comment: One commenter believed that the time period (1 working day) for the HMO/CMP to submit information to the PRO is unreasonable and is concerned that PROs may take longer than 1 day to complete their review.

Response: We do not agree with the commenter. Under the fee-for-service Medicare program, hospitals have their charts ready to submit to the PRO at the same time that the notice of noncoverage is given. This, in effect, gives the PRO another working day to review the medical chart. We believe HMOs/CMPs can adopt the same efficiencies and that it is in the financial interest of the HMO/CMP to ensure that all records are submitted as soon as possible. In regard to PRO timeliness, the PROs have an excellent record for completing these reviews in the time allotted and, in many cases, earlier.

Comment: Two commenters believed that the proposed appeals process should be available to Medicare enrollees in nursing homes and those receiving home health services.

Response: We will consider this comment for regulatory action at a later date. This modification is significant enough to require issuance of a second proposed rule, and we believe that this final rule should not be delayed.

Comment: One commenter asked that § 417.440(f)(3) be revised to add the date of discharge to the list of information the notice of noncoverage will include.

Response: We believe that HMOs and CMPs should have the flexibility either to use the Medicare hospital notice of noncoverage or to develop their own. In our interactions with PROs and hospitals on this matter, the inclusion or absence of the discharge date on the notice has not been identified as a problem or a concern. Therefore we have not modified this provision in the final rule.

Comment: Several provisions of § 417.454 appear to have been dropped as part of the proposed rule.

Response: The revision to § 417.454 as published in the proposed rule does remove existing paragraphs (a)(1) through (a)(3). This was done in error and is corrected in the final rule. In the final rule, a paragraph heading is added to existing paragraph (a); the new provision that limits charges for inpatient hospital stays is added as a new paragraph (b); and a paragraph heading is added to existing paragraph (b), and the paragraph redesignated as paragraph (c). No modification is made to other existing text in section § 417.454.

C. Administrative Review Requirements for HCPPs

Comment: Two commenters expressed concern about our regulations extending the section 1876 managed care administrative review requirements to HCPPs and disagreed with our interpretation of the intent of the Congress in this regard. It was the opinion of both commenters that the Congress should expressly legislate these requirements.

Response: As noted previously, section 1833 of the Act simply permits entities that provide Part B services on a prepayment basis to be paid reasonable costs rather than reasonable charges. There is no indication that the Congress intended to deprive enrolled beneficiaries of meaningful appeal rights. Our regulations governing HCPPs were designed to establish a workable mechanism for reimbursing them, in light of the fact that the way they do business is more comparable to HMOs and CMPs than it is to physicians, suppliers, and providers who are paid under Part B.

As certain aspects of the Medicare program have been improved over the years, such as the addition of beneficiary protections, we have not revised HCPP regulations to reflect these changes. Recently, we have embarked on an effort to identify actions that are within our authority, to ensure that the HCPP program is administered prudently and that Medicare beneficiaries enrolled in these plans have rights and benefits comparable to those that beneficiaries have in the fee-for-service system and in HMOs/CMPs. We believe that we have administrative authority to ensure that these beneficiaries are given appropriate appeal rights.

Comment: One commenter was concerned that, since HCPPs are not required to provide all Part B services, the administrative review process be limited to those Medicare covered services provided by the health plan under its agreement with us.

Response: Paragraph (b)(2) of § 417.838 ("Organization determinations") of the regulation

addresses this concern by specifying that a determination regarding services that are not covered under the HCPP's agreement with HCFA is not an organization determination.

Comment: One commenter stated that disputes over the level or manner in which a service is provided, such as model variations of durable medical equipment, should not be subject to the appeals process.

Response: The appeal rights of Medicare enrollees of an HCPP pertain to disputes involving an organization determination. We believe that § 417.838(a), which identifies actions that are organization determinations, responds to this concern. Section 417.838(a) limits the applicability of the appeals process to a refusal, on the grounds that the services are not covered by Medicare, to furnish or arrange for services or pay for services furnished to the beneficiary.

Comment: One commenter sought clarification on whether an HCPP's refusal to pay coinsurance on services obtained out-of-plan (and paid for by the carrier) would be subject to the appeals process.

Response: The HCPP's obligation to pay coinsurance amounts, where the plan's Medicare premium covers such amounts, would depend on the circumstances. If an enrollee is denied a service by the HCPP, then obtains the service out-of-plan, and subsequently the service is determined to be a covered service and paid for by the carrier under Medicare principles of reimbursement, the enrollee can request that the health plan pay the coinsurance amount. Then, if the HCPP makes an organization determination that is adverse to the enrollee, or fails to complete its review in 60 days, the matter would be referred to us for reconsideration.

Comment: One commenter suggested allowing HCPP enrollees to retain existing appeal rights through Medicare carriers if the HCPP review process proves futile or ineffective.

Response: We disagree. One intent of this rule is to ensure that HCPP enrollees have the same appeal rights as other beneficiaries in Medicare managed care. A back-up system does not exist for other Medicare beneficiaries and cannot be justified on either a cost or programmatic basis. When this rule takes effect, HCPP performance in operating an effective administrative review process will be added to our contractor monitoring process.

Comment: One commenter stated that the estimate for additional paperwork burden on HCPPs related to these new requirements is grossly underestimated.

Response: Health plans that contract with us as HCPPs vary in their administrative systems and capability to adapt to the new requirements. While we agree that the estimate may underrepresent the additional burden on some health plans, it may not for others. We attempted to estimate an "average" additional workload, given that most HCPPs have a grievance system for commercial enrollees on which to build an appeals system for Medicare enrollees.

Comment: One commenter stated that they opposed a change to § 417.630 ("Right to a hearing") regarding "amounts remaining in controversy" to qualify for a hearing.

Response: Addition of this phrase is a clarification of existing practice, not a substantive change. Beneficiary appeals made to Medicare managed care organizations may be denied in full or in part. Once a service or a claim has been covered by an HMO/CMP, even if the service is only one part of the appeal, § 417.604(a)(2) specifies that the service or claim is no longer subject to appeal. Only those services that continue to be denied may be moved through the process of reconsideration to hearing.

Comment: One commenter opposed the change in terminology from "initial determination" to "organization determination." The commenter is concerned that policy issues may be mislabeled as "organization issues" and be misdirected to the appeals process.

Response: The concern of the commenter, we believe, is that communications to an HMO or CMP questioning the plan's coverage policies will be misinterpreted and directed to the plan's appeal process. We believe that HMOs and CMPs can distinguish between challenges to the plan's coverage policies, in general, and appeals of coverage decisions for specifically requested services, if clearly communicated. We do not believe that the commenter's rationale warrants a change from using the terminology "organization determination" as proposed.

D. Other Comments

Comment: One commenter suggested that HMOs be granted formal appeal rights.

Response: We have considered this suggestion. However, because the commenter is suggesting a significant change that was not addressed in the proposed rule, we cannot address this issue at this time. The issue of HMO and CMP appeal rights, as well as other appeals process issues, will be evaluated and considered for development as a separate regulation.

Comment: One commenter questioned allowing HMOs/CMPs to request a reopening of a determination and another commenter recommended that an HMO/CMP request for a reopening should not delay implementation of the reconsideration determination.

Response: With regard to the first comment, the regulations impose no limitation on who may request a reopening, although the decision whether to reopen is discretionary with the decisionmaker. In response to the second comment, § 417.626 provides that a reconsidered determination is "final and binding" on all parties unless a hearing request is filed, or the determination "is revised" in accordance with a reopening decision. Therefore, if an HMO's or CMP's denial of a service or claim is overturned upon reconsideration, the plan must abide by the determination unless and until the termination is overturned as the result of the reopening.

We will consider the need for intermediate sanction authority for HMOs and CMPs failing to abide by reconsidered determinations in a forthcoming rulemaking initiative.

Comment: Two commenters recommended that we require HMOs/CMPs to prominently post information about the appeals process and send out a national notice communicating information about appeal rights.

Response: Existing § 417.604(c) ("Written description of appeals procedure") requires HMOs/CMPs to provide enrollees with written materials on appeal procedures. We believe that this is a better method for ensuring that all enrollees are informed. Further, this approach makes the information readily available in the enrollee's own home. With regard to the need for a national communication, we agree that beneficiaries should be made aware of the new appeal rights and procedures. We will modify the Medicare Handbook and other booklets and pamphlets routinely distributed by us to incorporate the policies of this final regulation.

Comment: One commenter suggested that we require HMOs/CMPs to notify enrollees, in writing, of the changes adopted in the final rule and to submit a plan for educating enrollees about the new rights and procedures.

Response: While we disagree that a special education program is needed, we agree that HMOs/CMPs must inform Medicare enrollees of these new protections. HMOs/CMPs have various means of communicating with enrollees, including written material (for example,

newsletters), and use of these means for informing Medicare beneficiaries of these new appeal rights is acceptable to us. The requirement at § 417.604, discussed above, is adequate for this purpose and another regulatory requirement is unnecessary. HMOs, CMPs, and HCPPs must notify their enrollees of the changes/additions to the appeal rights and when they are effective.

Comment: Two commenters recommended that these appeal rights be extended to Medicaid recipients in prepaid health plans.

Response: Appeal rights for Medicaid beneficiaries is not part of the scope of this rulemaking effort. These comments, however, have merit and have been brought to the attention of appropriate persons within our Office of Managed Care.

Comment: One commenter stated that we changed § 417.801(4) without addressing it in the preamble.

Response: We assume that the commenter is referring to § 418.801(b)(4). In the amendatory language of the proposed rule, we stated that "In § 417.801, the introductory language of paragraph (b) is republished, paragraph (b)(4) is revised, paragraph (b)(5) is redesignated as paragraph (b)(6), and a new paragraph (b)(5) is added to read as follows:". That amendatory language contained technical errors. Paragraph (b)(4) was not revised; the language published in the proposed rule is the same as existing paragraph (b)(4). Additionally, existing paragraph (b)(5) should not have been redesignated; existing paragraph (b)(6) should have been redesignated as paragraph (b)(7) and a new paragraph (b)(6) added. These errors have been corrected in the final rule.

IV. Provisions of This Final Rule

We have adopted the provisions of the October 7, 1992, proposed rule, with the following changes, which have been discussed above:

- We have revised proposed § 417.440(f) ("Notice of noncoverage of inpatient hospital care"). This proposed section required that, before giving notice of noncoverage, the HMO or CMP must obtain the concurrence of the attending physician. We have revised "attending physician" to "its affiliated physician responsible for the hospital care of the enrollee, or other physician as authorized by the HMO or CMP".
- Proposed § 417.454 ("Charges to Medicare enrollees") is revised to restore existing provisions that were erroneously removed in the proposed rule.
- We have revised paragraph (c) of proposed § 417.620 ("Responsibility for reconsiderations; time limits) to require that the HMO or CMP issue the reconsidered determination to the enrollee, or submit an explanation and file to us, within 60 days from the date of receipt of the request for reconsideration.
- We have revised proposed § 417.838(b) ("Actions that are not organization determinations") by adding a new paragraph (3). New paragraph (3) specifies that a determination regarding services that are covered under the HCPP's agreement with us that the enrollee obtained from unaffiliated providers or physicians, in violation of the HCPP's enrollment agreement, is not an organization determination for purposes of administrative review procedures.

In addition to the above changes, in a number of sections, we made a nomenclature change by substituting "HMO or CMP" and its plural and possessive forms for the words "organization", "organizations" and "organization's", respectively. This change was made to use consistent terminology throughout part 417.

We also have made technical changes and minor editorial changes that do not affect the substance of the provisions.

V. Paperwork Burden

Sections 417.440(f), 417.605, 417.620, and 417.836 of this rule contain additional requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). HMOs and CMPs are required to notify beneficiaries if the HMO or CMP refers a request for reconsideration to HCFA. We estimate that this reporting burden will be approximately 5 minutes per case. Also, before a hospital discharge, HMOs and CMPs are required to provide Medicare enrollees with a written notice of a determination that an enrollee's inpatient hospital stay is no longer necessary. We estimate that the reporting burden for an HMO or CMP that has not delegated the discharge decision to the hospital to provide the written notice of noncoverage to be approximately 10 minutes per notice; for a Medicare enrollee of an HMO or CMP to complete a request for immediate PRO review of a notice of a determination that an inpatient hospital stay is no longer necessary to be approximately 10 minutes per request; for the HMO or CMP to submit requested medical information to the PRO, to be approximately ½ hour per response. HCPPs are required to develop appeal procedures and inform Medicare enrollees of appeal rights. We estimate that it will take an HCPP 40 hours to develop these appeal procedures and 1 hour to process each appeal. A notice will be published in the **Federal Register** when OMB approval is obtained.

VI. 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 a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs, CMPs, and HCPPs to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This 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 final rule provides the Medicare HMO or CMP enrollee with the same administrative review rights and financial protections as are available to beneficiaries in the fee-for-service system. To the extent that current Medicare membership in HMOs, CMPs, and HCPPs to which this rule will apply is low (approximately 7 percent of the total Medicare population), we do not expect any significant increased costs or savings as a result of this final rule.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

Lists of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR part 417 is amended as follows:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. In § 417.440, a new paragraph (f) is added, to read as follows:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(f) *Notice of noncoverage of inpatient hospital care.* (1) If an enrollee is an inpatient of a hospital, entitlement to inpatient hospital care continues until he or she receives notice of noncoverage of that care.

(2) Before giving notice of noncoverage, the HMO or CMP must obtain the concurrence of its affiliated physician responsible for the hospital care of the enrollee, or other physician as authorized by the HMO or CMP.

(3) The HMO or CMP must give the enrollee written notice that includes the following:

(i) The reason why inpatient hospital care is no longer needed.

(ii) The effective date of the enrollee's liability for continued inpatient care.

(iii) The enrollee's appeal rights.

(4) If the HMO or CMP delegates to the hospital the determination of noncoverage of inpatient care, the hospital obtains the concurrence of the HMO- or CMP-affiliated physician responsible for the hospital care of the enrollee, or other physician as authorized by the HMO or CMP, and sends notice, following the procedures set forth in § 412.42(c)(3) of this chapter.

3. Section 417.454 is amended by adding a paragraph heading to paragraph (a), redesignating paragraph (b) as paragraph (c) and adding a paragraph heading, and adding a new paragraph (b), to read as follows:

§ 417.454 Charges to Medicare enrollees.

(a) *Charges that are permitted.* * * *

(b) *Limit on charges for inpatient hospital care.* If a Medicare enrollee who is an inpatient of a hospital requests immediate PRO review (as provided in § 417.605) of any determination by the hospital furnishing services or the HMO or CMP that the inpatient hospital services will no longer be covered, the HMO or CMP may not charge the enrollee for any inpatient care costs incurred before noon of the first working day after the PRO issues its review decision.

(c) *Reporting requirements.* * * *

§§ 417.600, 417.612, 417.622 [Amended]

4. Nomenclature change: In the following sections of subpart Q, the term "initial determination" or "initial determinations" is revised to read "organization determination" or "organization determinations", respectively, wherever it appears:

a. § 417.600.

b. § 417.612, section title and text.

c. § 417.622(b).

5. Section 417.604 is amended by revising paragraphs (a) and (b) to read as follows:

§ 417.604 General provisions.

(a) *Applicability.* The appeals procedures set forth in this subpart apply to organization determinations as defined in § 417.606, with the following exceptions:

(1) If an enrollee requests immediate PRO review (as provided in § 417.605) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to subsequent review of that issue under this subpart; and

(ii) The PRO review decision is subject to the appeals procedures set forth in part 473 of this chapter.

(2) Any determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further liability for payment are not subject to appeal.

(3) Services included in an optional supplemental plan (see § 417.440(b)(2)) are subject only to a grievance procedure under § 417.436(a)(2).

(4) Physicians and other individuals who furnish items or services under arrangement with an HMO or CMP have no right of appeal under this subpart.

(5) The provisions of subpart R of 20 CFR part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided in this subpart, also applicable to appeals under this subpart.

(b) *Responsibility for establishing appeals procedures.* The HMO or CMP is responsible for establishing and maintaining the appeals procedures that are specified in §§ 417.604 through 417.638.

* * * * *

6. A new § 417.605 is added to read as follows:

§ 417.605 Immediate PRO review of a determination of noncoverage of inpatient hospital care.

(a) *Right to review.* A Medicare enrollee who disagrees with a determination made by an HMO, CMP, or a hospital that inpatient care is no longer necessary may remain in the hospital and may (directly or through his or her authorized representative) request immediate PRO review of the determination.

(b) *Procedures.* For the immediate PRO review process, the following rules apply:

(1) The enrollee or authorized representative must submit the request for immediate review—

(i) To the PRO that has an agreement with the hospital under § 466.78 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after receipt of the written notice of the determination that the hospital stay is no longer necessary.

(2) On the date it receives the enrollee's request, the PRO must notify the HMO or CMP that a request for immediate review has been filed.

(3) The HMO or CMP must supply any information that the PRO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day immediately following the day the enrollee submits the request for review.

(4) In response to a request from the HMO or CMP, the hospital must submit medical records and other pertinent information to the PRO by close of business of the first full working day immediately following the day the HMO or CMP makes its request.

(5) The PRO must solicit the views of the enrollee who requested the immediate PRO review (or the enrollee's representative).

(6) The PRO must make a determination and notify the enrollee, the hospital, and the HMO or CMP by close of business of the first working day after it receives the information from the hospital, or the HMO or CMP, or both.

(c) *Financial responsibility*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the HMO or CMP continues to be financially responsible for the costs of the hospital stay until noon of the calendar day following the day the PRO notifies the enrollee of its review determination.

(2) *Exception.* The hospital may not charge the HMO or CMP (or the enrollee) if—

(i) It was the hospital (acting on behalf of the enrollee) that filed the request for immediate PRO review; and

(ii) The PRO upholds the noncoverage determination made by the HMO or CMP.

7. Section 417.606 is revised to read as follows:

§ 417.606 Organization determinations.

(a) *Actions that are organization determinations.* An organization determination is any determination made by an HMO or CMP with respect to any of the following:

(1) Payment for emergency or urgently needed services.

(2) Any other health services furnished by a provider or supplier other than the HMO or CMP that the enrollee believes—

(i) Are covered under Medicare; and

(ii) Should have been furnished, arranged for, or reimbursed by the HMO or CMP.

(3) The HMO's or CMP's refusal to provide services that the enrollee believes should be furnished or arranged for by the HMO or CMP and the enrollee has not received the services outside the HMO or CMP.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of this subpart:

(1) A determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services included in an optional supplemental plan (see § 417.440(b)(2)).

(c) *Relation to grievances.* A determination that is not an organization determination is subject only to a grievance procedure under § 417.436(a)(2).

8. Section 417.608 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 417.608 Notice of adverse organization determination.

(a) If an HMO or CMP makes an organization determination that is partially or fully adverse to the enrollee, it must notify the enrollee of the determination within 60 days of receiving the enrollee's request for payment for services.

* * * * *

(c) The failure to provide the enrollee with timely notification of an adverse organization determination constitutes an adverse organization determination and may be appealed.

9. In § 417.610, the section heading is revised, the undesignated introductory text is revised, and paragraph (b) is revised, to read as follows:

§ 417.610 Parties to the organization determination.

The parties to the organization determination are—

* * * * *

(b) An assignee of the enrollee (that is, a physician or other supplier who has provided a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service);

* * * * *

10. Section 417.614 is revised to read as follows:

§ 417.614 Right to reconsideration.

Any party who is dissatisfied with an organization determination or with one that has been reopened and revised may request reconsideration of the determination in accordance with the procedures of § 417.616.

11. In § 417.616, the introductory text of paragraph (a) is republished, and paragraphs (a)(1), (b), (c)(1), and (c)(2) introductory text are revised, to read as follows:

§ 417.616 Request for reconsideration.

(a) *Method and place for filing a request.* A request for reconsideration must be made in writing and filed with—(1) The HMO or CMP that made the organization determination;

* * * * *

(b) *Time for filing a request.* Except as provided in paragraph (c) of this section, the request for reconsideration must be filed within 60 days from the date of the notice of the organization determination.

(c) *Extension of time to file a request*—(1) *Rule.* If good cause is shown, the HMO or CMP that made the organization determination may extend the time for filing the request for reconsideration.

(2) *Method of requesting an extension.* If the time limit in paragraph (b) of this section has expired, a party to the organization determination may file a request for reconsideration with the HMO or CMP, HCFA, SSA, or, in the case of a qualified railroad retirement beneficiary, an RRB office. The request to extend the time limit must—

* * * * *

§ 417.618 [Amended]

12. In § 417.618, ", carrier, or intermediary" is removed.

13. Section 417.620 is revised to read as follows:

§ 417.620 Responsibility for reconsiderations; time limits.

(a) If the HMO or CMP can make a reconsidered determination that is completely favorable to the enrollee, the HMO or CMP issues the reconsidered determination.

(b) If the HMO or CMP recommends partial or complete affirmation of its adverse determination, the HMO or CMP must prepare a written explanation and send the entire case to HCFA. HCFA makes the reconsidered determination.

(c) The HMO or CMP must issue the reconsidered determination to the enrollee, or submit the explanation and file to HCFA, within 60 calendar days from the date of receipt of the request for reconsideration.

(d) For good cause shown, HCFA may allow exceptions to the time limit set forth in paragraph (c) of this section.

(e) Failure by the HMO or CMP to provide the enrollee with a reconsidered determination within the 60-day limit described in paragraph (c) of this section or to obtain a good cause extension described in paragraph (d) of this section constitutes an adverse determination, and the HMO or CMP must submit the file to HCFA.

(f) If the HMO or CMP refers the matter to HCFA, it must concurrently notify the beneficiary of that action.

14. In § 417.622, the introductory text is republished, and paragraph (a) is revised to read as follows. [For a nomenclature change in paragraph (b), see amendatory item 4.]

§ 417.622 Reconsidered determination.

A reconsidered determination is a new determination that—

(a) Is based on a review of the organization determination, the evidence and findings upon which it was based, and any other evidence submitted by the parties or obtained by HCFA or the HMO or CMP; and

* * * * *

15. Section 417.630 is revised to read as follows:

§ 417.630 Right to a hearing.

If the amount remaining in controversy is $100 or more, any party to the reconsideration who is dissatisfied with the reconsidered determination has a right to a hearing. (The amount remaining in controversy, which can include any combination of Part A and Part B services, is computed in accordance with § 405.740 of this chapter for Part A services and § 405.820(b) of this chapter for Part B services. If the basis for the appeal is the refusal of services, the projected value of those services is used in computing the amount remaining in controversy.)

16. Section 417.638 is revised to read as follows:

§ 417.638 Reopening determinations and decisions.

An organization, reconsidered, or revised determination made by an HMO, CMP, or HCFA, or a decision or revised decision of an ALJ or the Appeals Council, may be reopened in accordance with the provisions of § 405.750 of this chapter.

17. In § 417.801, the introductory language of paragraph (b) is republished, paragraph (b)(6) is redesignated and republished as paragraph (b)(7), and a new paragraph (b)(6) is added to read as follows:

§ 417.801 Agreements between HCFA and health care prepayment plans.

* * * * *

(b) *Terms.* The agreement must provide that the HCPP agrees to—

* * * * *

(6) Establish administrative review procedures in accordance with §§ 417.830 through 417.840 for Medicare enrollees who are dissatisfied with denied services or claims; and

(7) Consider any additional requirements that HCFA finds necessary or desirable for efficient and effective program administration.

* * * * *

18. New §§ 417.830, 417.832, 417.834, 417.836, 417.838, and 417.840 are added under subpart U to read as follows:

§ 417.830 Scope of regulations on beneficiary appeals.

Sections 417.832 through 417.840 establish procedures for the presentation and resolution of organization determinations, reconsiderations, hearings, Appeals Council review, court reviews, and finality of decisions that are applicable to Medicare enrollees of an HCPP.

§ 417.832 Applicability of requirements and procedures.

(a) The administrative review rights and procedures specified in §§ 417.834 through 417.840 pertain to disputes involving an organization determination, as defined in § 417.838, with which the enrollee is dissatisfied.

(b) Physicians and other individuals who furnish items or services under arrangements with an HCPP have no right of administrative review under §§ 417.834 through 417.840.

(c) The provisions of subpart R of 20 CFR part 404 dealing with representation of parties under title II of the Act are, unless otherwise provided, also applicable.

§ 417.834 Responsibility for establishing administrative review procedures.

The HCPP is responsible for establishing and maintaining the administrative review procedures that are specified in §§ 417.830 through 417.840.

§ 417.836 Written description of administrative review procedures.

Each HCPP is responsible for ensuring that all Medicare enrollees are informed in writing of the administrative review procedures that are available to them.

§ 417.838 Organization determinations.

(a) *Actions that are organization determinations.* For purposes of §§ 417.830 through 417.840, an organization determination is a refusal to furnish or arrange for services, or reimburse the party for services provided to the beneficiary, on the grounds that the services are not covered by Medicare.

(b) *Actions that are not organization determinations.* The following are not organization determinations for purposes of §§ 417.830 through 417.840:

(1) A determination regarding services that were furnished by the HCPP, either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services that are not covered under the HCPP's agreement with HCFA.

§ 417.840 Administrative review procedures.

The HCPP must apply §§ 417.608 through 417.638 to organization determinations that affect its Medicare enrollees, and to reconsideration, hearings, Appeals Council review, and judicial review of those organization determinations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance.)

Dated: May 20, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 4, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–28399 Filed 11–18–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7605]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Georgia:			
Monticello, city of, Jasper County	130510	Oct. 3, 1994	
Montgomery County, Unincorporated Areas	130139	.....do	3–19–76.
Oklahoma:			
Greer County, Unincorporated Areas	400544	.....do	
Georgia:			
Wheeler County, Unincorporated Areas	130190	.....do	4–30–76.
Pike County, Unincorporated Areas	130511	Oct. 11, 1994	
Danville, town of, Twiggs and Wilkinson Counties	130512	Oct. 17, 1994	
Grady County, Unincorporated Areas	130096	Oct. 20, 1994	6–17–77.
Massachusetts:			
New Ashford, town of, Berkshire County	250032	Oct. 24, 1994	11–22–74.
Georgia:			
Ellaville, city of, Schley County	130513	Oct. 31, 1994	
New Eligibles—Regular Program			
Illinois:			
Wayne, village of, Dupage and Kane Counties	170865	Oct. 3, 1994	12–1–81.
Ohio:			
New Knoxville, village of, Auglaize County	390848	.....do	9–6–89.
Creston, village of, Wayne County	390575	Oct. 17, 1994	5–3–93.
Reinstatements—Regular Program			
Mississippi:			
Batesville, city of, Panola County	280126	Apr. 2, 1974, Emerg; Sept. 15, 1989, Reg; Sept. 15, 1989, Susp; Sept. 21, 1994, Rein.	9–15–89.
Georgia:			
Springfield, city of, Effingham County	130427	Jan. 16, 1976, Emerg; Mar. 18, 1987, Reg; Mar. 18, 1987, Susp; Oct. 5, 1994, Rein.	3–18–87.
Illinois:			
Lakewood, village of, McHenry County	170805	Mar. 25, 1974, Emerg; Sept. 4, 1985, Reg; Sept. 4, 1985. Susp; Oct. 24, 1994, Rein.	9–4–85.
Regular Program Conversions			
Region II			
New York:			
Hamburg, town of, Erie County	360244	Oct. 4, 1994 suspension withdrawn	10–4–94.
Region V			
Indiana:			
Ellettsville, town of, Monroe County	180170	.....do	Do.
Jasper, city of, DuBois County	180055	Oct. 18, 1994 suspension withdrawn	10–18–94.
Minnesota:			
Argyle, city of, Marshall County	270268	.....do	Do.
Ohio:			
South Lebanon, village of Warren County	390563	.....do	Do.
Region X			
Idaho:			
Gooding, city of Gooding County	160064	.....do	Do.

Code for reading third column:
Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: November 15, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–28668 Filed 11–18–94; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 22, 24, and 90

[GN Docket No. 93–252, PR Docket Numbers 93–144 and 89–553; FCC 94–212]

Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this rulemaking proceeding, the Commission completes the initial implementation of sections 3(n) and 332 of the Communications Act of 1934 ("Communications Act" or "Act"), as amended by section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). As required by Congress, the Commission adopts changes to our technical, operational, and licensing rules for common carrier and private mobile radio services that are necessary to implement the statute and to establish regulatory symmetry among similar mobile services. The establishment of this regulatory framework also sets the stage for the future evolution of mobile services. In this respect, these rules changes mark an important step in the Commission's continuing effort to enhance competition among mobile services providers, promote the development of new and technologically innovative service offerings, and ensure that consumer demand, not regulatory decree, dictates the course of the mobile services marketplace.

EFFECTIVE DATE: January 2, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Boocker (202) 418–1300 or David Furth (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in GN Docket No. 93–252, adopted August 9, 1994 and released September 23, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Paperwork Reduction

Public reporting burden for the collections of information is estimated as follows:

Section/forms	Estimated average hours per response	Estimated annual responses
20.6(e)	.67	30
22.313	1	100
22.313(c)(1)[1]	.5	500
90.119	1	100
90.145	1	100
90.153	1	100
90.161	2	20
90.162	2	20
90.163	10	10
90.166	1	10
90.167	1	20
90.168(a)–(e)	2	100
90.168(f)[1]	52	100
90.425	1	100
90.449	1	100
90.607	2.5	144
90.631	1.5	45
90.633	1	15

[1] Recordkeeping.

Total Annual Burden: 6923.

Frequency of Response: On occasion, annually.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, DC 20503.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 604, a final regulatory flexibility analysis has been prepared and is presented below. It is available for public viewing as part of the full text of the decision, which may be obtained from the Commission or its copy contractor.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Further Notice of Proposed Rule Making* in GN Docket No. 93–252. Written comments on the proposals in the Further Notice, including the IRFA, were requested.

A. Need for and Purpose of Rules

This rule making proceeding was initiated to implement Sections 3(n) and 332 of the Communications Act of 1934, as amended. The policies adopted herein will carry out Congressional intent to establish a consistent regulatory framework for all commercial mobile radio service (CMRS) providers. Specifically, this Order ensures that CMRS providers who compete with one another will be subject to comparable technical, operational, and licensing rules.

B. Issues Raised by the Public in Response to the Initial Analysis

No comments were submitted specifically in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

The *Further Notice of Proposed Rule Making* in this proceeding offered numerous proposals. The commenters supported the major tenets of the proposed changes, and some commenters suggested changes to some of the Commission's proposals. The regulatory burdens we have retained for all CMRS licenses, including small entities, are necessary to carry out our duties under the Communications Act of 1934, as amended. For example, we have extended section 309 notice and comment procedures to all CMRS applicants. We also minimized regulatory burdens, where possible, for all CMRS licensees. For example, we adopt a unitary application form for all mobile services applicants and eliminate most end user eligibility requirements and restrictions on permissible uses of CMRS systems. In addition, our proposal to impose a cap on the amount of CMRS spectrum that licensees may aggregate in a given geographic area was discussed by many commenters. We conclude that the spectrum cap as proposed should not be adopted but, rather, that a more specific cap on aggregation of PCS, cellular and SMR spectrum should be adopted. A copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Synopsis of the Third Report and Order

Last year, in the Budget Act, Congress created the CMRS regulatory classification and mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the Commission's Rules. The

broad goal of this action is to ensure that economic forces—not disparate regulatory burdens—shape the development of the CMRS marketplace.

The Budget Act directs the Commission to take certain steps toward that goal not later than August 9, 1994. These steps include revising our rules to ensure the services reclassified as CMRS by the Budget Act are "subjected to technical [and operational] requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services." The Commission also must adopt rules for licensing CMRS, including reclassified services, pursuant to the radio common carrier licensing provisions of the Act. Finally, the Budget Act mandates that the Commission take appropriate steps to ensure an orderly transition to the new CMRS regulatory structure.

On April 20, 1994, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice) 59 FR 28042 (May 31, 1994) to address pending issues relating to the implementation of the statute. In particular, the Commission sought to address the impact of the amended statute on our technical, operational, and licensing rules for all mobile services, and particularly on the rules affecting those Part 90 services that were reclassified as CMRS by the CMRS Second Report and Order, 59 FR 18493 (April 19, 1994). As required by section 6002(d)(3) of the Budget Act, the Commission proposed to amend these rules to the extent necessary to ensure that competing mobile services would be subject to comparable regulatory requirements, and that inconsistencies in our regulation of substantially similar services would be eliminated to the extent practical. The *Further Notice* indicated that the Commission would act on its proposals not later than the August 9, 1994, deadline established by Congress for adoption of rules implementing the statute. On May 19, 1994, the Commission revised the *Further Notice* on its own motion to seek comment on the additional issue of whether the amount of spectrum that CMRS licensees may aggregate in a given geographic area should be limited. The Commission received 61 comments and 70 reply comments in response to the Further Notice.

In this Order the Commission takes four steps to implement both the broad goal of the Budget Act and the more narrowly focused requirements generated by its August 9, 1994, transition deadline. First, the Order determines which reclassified services are "substantially similar" to existing common carrier services in order to implement the Budget Act requirement that such services be subject to "comparable" regulation. Second, the Order revises part 90 and part 22 technical and operational rules governing those services to ensure that the rules are, indeed, "comparable."

Third, to effectuate the broad congressional goal of ensuring that competition shapes the development of the CMRS market, the Order adopts rules that cap at 45 MHz the total amount of combined broadband personal communications services (PCS), cellular, and Specialized Mobile Radio (SMR) spectrum in which an entity may have an attributable interest in any geographic area.

Fourth, to carry out Budget Act requirements concerning the licensing of CMRS services, the Order adopts uniform rules for licensing CMRS services, including reclassified services. The Commission is also modifying its licensing rules for part 22 CMRS and part 90 commercial services, where appropriate, to adopt filing windows for the filing of competing initial applications and conclude that competitive bidding procedures should be used to select from among mutually exclusive applications. Moreover, as the Further Notice tentatively concluded the Commission is taking the additional step of adopting a single, uniform application form for use by all CMRS and PMRS applicants in all terrestrial mobile services.

Summarized in the following section are the principal decisions the Commission is adopting in connection with each of the four actions taken in this Order. Before doing so, it is important to note that while all the rules adopted in this Order become effective on January 2, 1995, some of those rules do not apply immediately to the reclassified CMRS entities that will continue to be treated as private carriers under the grandfathering provisions of the Budget Act. Specifically, until the grandfathered period ends on August 9, 1996, with regard to existing licensees, such entities will not be subject to technical, operational, or licensing rule changes made in this Order that apply exclusively to CMRS. Instead, they will be subject to regulation as private carriers under part 90 of our rules. Grandfathered carriers should note, however, that they are governed by modifications to rules the Commission makes in this Order that are applicable to private carriers.

1. Substantially Similar Services

This Order establishes the framework for implementing the mandate of the Budget Act that the Commission revise its rules to the extent necessary and practical to ensure that providers of reclassified CMRS services are subjected to technical and operational rules comparable to those that apply to providers of substantially similar common carrier services. To that end, the Commission's initial task was to identify reclassified CMRS services that are "substantially similar" to common carrier services.

The goals of the Budget Act serve as the Commission's guidepost for this task: (1) To create a level regulatory playing field for CMRS; (2) to establish an appropriate level of regulation for the administration of CMRS; (3) to resolve "substantial similarity" issues with a view toward ensuring that unwarranted regulatory burdens are not imposed on reclassified CMRS providers; and (4) to promote the economic goals discussed in the CMRS Second Report and Order, including fostering economic growth, promoting investment in mobile telecommunications infrastructure, and enabling access to the national information superhighway.

Based on these goals, the Order concludes that the appropriate analytical framework for determining whether services are substantially similar is to assess whether licensees in those services actually or potentially compete to meet the needs and demands of consumers. The Order concludes that all reclassified private mobile radio services actually compete, or have the potential to compete within a reasonable time period, with existing commercial mobile radio services. In other words, the Commission concludes that all CMRS—including one-way messaging and data, and two-way voice, messaging, and data—are competing services or have the reasonable potential to become competing services in the CMRS marketplace. Thus, on the basis of this competitive analysis, the Order finds that all reclassified private services are substantially similar to existing commercial services, for purposes of section 332 of the Communications Act.

This broad reading of the term "substantially similar" furthers the statutory purposes of promoting uniformity in CMRS regulation and, thereby, minimizes the potentially distorting effects of asymmetrical regulation. This reasoning also comports with the Commission's analysis of current and likely future competition in the CMRS marketplace. Actual

competition among certain CMRS services exists already and, more importantly, the potential for competition among all CMRS services appears likely to increase over time due to expanding consumer demand and technological innovation. Such conditions argue for defining the class of "substantially similar" services expansively, at least for the limited purpose of establishing baseline technical and operational rules.

It is worth emphasizing the determinative relationship between the forward-looking policy goals embodied in the rule comparability requirement of the Budget Act and the Commission's assessment of competitive trends in the CMRS marketplace. Thus, this Order begins with the conclusion that mobile services will be treated as substantially similar if they compete against each other. Next, the Commission has chosen to take an expansive view of the present condition of competition among services in the CMRS marketplace, and of the potential for competition among these services in the future, because such a view maximizes the range of services that can be considered to be substantially similar. This in turn leads the Commission to conclude that, to the extent practical, technical and operational rules should be comparable for virtually all existing and reclassified CMRS services. This conclusion furthers the Commission's policy objective of ensuring a level regulatory playing field for CMRS. The Order notes, however, that an analysis performed in the context of a different set of policy goals, or application of the same policy goals to different circumstances, may result in different conclusions regarding the extent of competition.

2. Comparable Technical and Operational Rules

The determination that actual and potential competition among CMRS services makes them "substantially similar" for purposes of Budget Act analysis carries over into the assessment of technical and operational rules. The Order concludes that differences between rules governing actually or potentially competitive services should be conformed if the Commission determines that the differences distort competition by placing unequal regulatory burdens on different classes of CMRS providers. Such conformity between rules will not be imposed, however, if the Commission determines that, although the relative burdens imposed by the rules may not be identical, the cost of conforming the rules outweighs the benefit that might be gained thereby. Pursuant to this analytical framework, the principal determinations are as follows:

a. Service Area and Channel Assignment Rules

800 MHz SMR: The Order adopts the principle that 800 MHz SMR systems should be licensed on a Major Trading Area (MTA) basis to the extent feasible, but defers for further comment the specifics of licensing such systems to ensure that the interests of both existing licensees and potential entrants are taken into account. The Commission will shortly issue a further notice of proposed rule making in our 800 MHz docket (PR Docket No. 93–144) regarding: (1) Designating 200 contiguous SMR channels for MTA licensing based on 50-channel blocks; (2) continuing to license the remaining 80 SMR channels under existing rules; and (3) allowing incumbents to continue operating on existing channels. The Order declines to adopt a proposal by Nextel that certain 800 MHz incumbents be subject to mandatory returning to new frequencies, but the Commission will seek further comment on this issue. The Order further concludes that both existing SMR licensees and new entrants will be eligible for MTA licenses, with licensees to be selected by auctionin the event of mutually exclusive applications. Finally, the Order concludes that in light of the fundamental changes to be implemented in 800 MHz licensing, the Commission is suspending the acceptance of all new 800 MHz SMR applications, as of August 9, 1994.

900 MHz SMR: The Order adopts MTA-based licensing of all 200 channels in blocks of 10 channels. The Order concludes that eligibility for MTA licenses will be open to existing licensees and new entrants, with competitive bidding to be used in the event of mutually exclusive applications. Incumbent licensees who do not obtain MTA licenses will be entitled to continue operating under existing authorizations.

220 MHz Commercial Service: The Order concludes that service area definitions and channel assignment rules applicable to licensing of 220 MHz systems should not be changed at this time. The Commission will address such issues in a separate, future rule making proceeding.

Private Carrier Paging: The Order adopts no conformance changes to existing part 90 and part 22 paging rules in this docket. The Commission will defer further action until it examines the question of wide-area licensing and whether further conforming of Commission rules is feasible.

b. Other Technical and Operational Rules

The Order concludes that no fundamental changes should be made to existing rules regulating co-channel interference, adjacent channel interference, or antenna height and transmitter power.

The Order concludes that all CMRS and PMRS mobiles and portables shall be subject to the 1992 ANSI/IEEE Radio Frequency (RF) exposure guidelines. The Order further concludes that this decision will be implemented in the proceeding in which the Commission is conducting a complete review of RF exposure guidelines, ET Docket No. 93–62.

The Order concludes that new interoperability requirements will not be adopted for CMRS equipment at this time, but the Commission will be retaining the existing interoperability rule applicable with regard to cellular service. The Commission intends to explore the question of interoperability requirements for CMRS equipment in a future inquiry.

The Order adopts a uniform 12-month construction requirement for all CMRS licensees, except in instances in which the rules specify a longer period for systems of greater size or complexity. The Order eliminates loading requirements for CMRS, except that incumbent 900 MHz SMR licensees must meet current requirements for retaining channels at renewal. In addition, the Order adopts rules allowing a multi-station CMRS system to use a single call sign for station identification purposes.

The Order eliminates existing user eligibility restrictions that prevent SMR, private carrier paging, Business Radio, and commercial 2209 MHz licensees from providing service to foreign governments and their representatives. The Commission also eliminates eligibility restrictions that prevent Business Radio licensees from providing service to individuals. The Order also eliminates the part 90 restriction on common carrier communications for reclassified CMRS services. Finally, the Order applies existing Equal Employment Opportunity requirements to all CMRS licensees.

3. Spectrum Aggregation Limit

This Order addresses the issue of imposing a cap on the amount of CMRS spectrum a licensee may aggregate in a given geographic area as a means of preventing potentially anticompetitive aggregation of CMRS spectrum. The Commission concludes that to preserve competitive opportunities in the CMRS

marketplace, it is unnecessary to establish, in addition to existing CMRS spectrum aggregations limitations, the broad CMRS spectrum cap proposed in the Further Notice. Rather, the Order concludes that the Commission's goals will be achieved by capping at 45 MHz the total amount of PCS, cellular, and SMR spectrum in which an entity may have an attributable interest in any geographic area. The Order adopts this cap as a minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation.

The Order also reaches the following determinations with regard to implementation of the spectrum cap. First, the Order concludes that various encumbrances on SMR spectrum *vis-à-vis* cellular or broadband PCS should be accounted for when measuring SMR spectrum for purposes of the cap. Therefore, the Commission will attribute to an entity a maximum of 10 MHz of SMR spectrum, including both 800 and 900 MHz spectrum for purposes of determining compliance.

Second, the Order adopts a 20 percent cross ownership attribution rules for licensees other than designated entities. Thus, when an entity other than a designated entity has a 20 percent or greater ownership interest in an SMR, cellular, or PCS license in a particular geographic area, the entire amount of spectrum associated with that license will be attributed to that entity for spectrum cap purposes. For designated entities, the attribution level will be a 40 percent or greater ownership interest.

Third, to compute an SMR spectrum total in a given market, the licensee must identify all attributable 800 MHs and 900 MHz SMR base stations located inside the MTA or BTA. All 800 MHz and 900 MHz channels located on at least one of those base stations count as 50 kHz and 25 kHz, respectively. This total can be reduced using a 10 percent population overlap test similar to that used for the current cellular-PCS spectrum cap.

4. Licensing Rules and Procedures

Section 332 of the Act, as amended by the Budget Act, provides that CMRS providers are to be "treated as common carriers for purposes of (the) Act." The Order concludes that this means, among other things, that all CMRS applications must comply with common carrier licensing procedures enumerated in Title III of the Act. Thus, the Order adopts rules that implement those procedures with regard to existing licensees and future applicants on SMR, Business Radio, 220 MHz, and Part 90 paging frequencies who provide or propose to provide service that meets the CMRS definition.

In particular, the following presents a partial list of measures the Commission is adopting to ensure that CMRS applications under part 90 comply with the statutory requirements for licensing of common carriers under Title III of the Act, as well as to streamline and unify processing of all CMRS and PMRS applications.

Application Forms and Procedures—The Order adopts a single unified application form (Form 600) for all CMRS and PMRS applicants in all terrestrial services. Form 600 will also be used to determine the regulatory classification of an applicant.

Qualifying Information—All parties to a CMRS application will be required to comply with the alien ownership restrictions of section 310(b) of the Act and must also disclose whether: (1) Any party has had a Commission license or permit revoked; (2) any party has been found by a court to have monopolized radio communication; or (3) any party has been convicted of a felony.

Application Fees and Regulatory Fees—Currently, application fees can only be changed by Congress. Therefore, the existing application fee schedule will continue to govern fee requirements. If, however, Congress acts to extend to the Commission authority to modify the fee schedules, we will address the question of altering our regulatory fees at that time.

Public Notice and Petition To Deny Procedures—The Order adopts rules that apply the public notice and petition to deny procedures currently contained in part 22 to all CMRS applicants. In addition to applications for initial licenses, these procedures will extend to applications for major modifications and for assignments and transfers of part 90 CMRS licenses.

Mutually Exclusive Applications and Competitive Bidding—The Order Adopts rule changes that will generally result in using 30-day notice and cut-off procedures and competitive bidding to select among mutually exclusive initial CMRS applications in part 22 services (except for Phase I cellular unserved area applications), 900 MHz SMR service, and 800 MHz SMR service. For Phase I cellular applications the Order adopts a one-day filing window, concluding that such a window is sufficient because there is a date certain on which applications for unserved areas are permitted to be filed. The Order adopts no changes to application procedures for 929–930 MHz paging in Part 90, but notes that some procedural changes are likely to be considered in the future.

Amendment of Applications and License Modification—The Order adopts rule changes that conform part 22 and part 90 definitions for initial applications and major and minor amendments and modifications, to the extent practicable. Modification applications will be accepted for filing on a first-come, first-served basis.

Conditional and Special Temporary Authority—The Order concludes that the waiting period for pre-grant construction for part 22 CMRS should be reduced from 90 to 35 days, and we establish a 35-day waiting period for all CMRS. The Order also determines that section 309(f) of the Act prohibits pre-grant operation under special temporary authority (STA) except in those cases in which the applicant establishes that there are "extraordinary circumstances" where a delay in operations would seriously prejudice the public interest.

Ordering Clauses

Accordingly, it is ordered that the rule changes made, as specified below, will become effective January 2, 1995, pursuant to sections 4(i), 4(j), 7(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), and 332(d) of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), and 332(d).

It is further ordered that the acceptance of 800 MHz applications on the 280 SMR category channels is suspended, effective August 9, 1994, except that applications for transfer or assignment of existing SMR facilities will continue to be accepted.

It is further ordered that authority is delegated to the Chief, Common Carrier Bureau, as specified herein, to develop a new form or modify existing forms for licenses or applicants to certify and/or provide information showing that they are in compliance with the spectrum aggregation limit adopted in this Order.

It is further ordered that the Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the motion to accept late-filed comments filed by E.F. Johnson Company is granted.

It is further ordered that the Request for Declaratory Ruling and Request for Rule Waiver filed by SunCom Mobile & Data is denied.

It is further ordered that the Petition for Rule Making filed by the American Mobile Telecommunications Association, RM–8387, is dismissed as moot.

It is further ordered that the Emergency Petition to Dismiss

Comments and Reply Comments of the American Mobile Telecommunications Association, filed by Range Corporation d/b/a Range Telecommunications, is denied.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 20

Commercial mobile radio services.

47 CFR Part 22

Public mobile services, Radio.

47 CFR Part 24

Personal communications services.

47 CFR Part 90

Private land mobile services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Amendments

47 CFR parts 1, 20, 22, 24, and 90 are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 31 U.S.C. 853a, unless otherwise noted.

§ 1.823 [Amended]

2. Section 1.823 is amended by removing and reserving paragraph (b)(2).

3. Section 1.901 is revised to read as follows:

§ 1.901 Scope.

In the case of any conflict between the rules set forth in this subpart and the rules set forth in part 13 of this chapter or the rules set forth for specific services in parts 80 through 97 of this chapter (other than rules relating to Commercial Mobile Radio Services contained in part 90 of this chapter), the rules in this subpart shall govern. In the case of any conflict between the rules set forth in this subpart and the rules relating to Commercial Mobile Radio Services set forth in part 20 of this chapter or in part 90 of this chapter, the rules in part 20 or part 90 of this chapter shall govern.

4. Section 1.922 is revised to read as follows:

§ 1.922 Forms to be used.

FCC form	Title
175	Application To Participate in an FCC Auction.
175–S	Supplemental Application To Participate in an FCC Auction.
402	Application for Microwave Station Authorization in the Safety and Special Radio Services.
402–10	Instructions for Completion of FCC Form 402.
402–A	Annual Report of Licensees of Microwave and Other Fixed Stations When Such Facilities Are Used Cooperatively With Other Persons.
402–R	Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Services.
404	Application for Aircraft Radio Station License.
404–A	Temporary Aircraft Radio Station Operating Authority.
405–A	Application for Renewal of Station License.
405–B	License Expiration Notice and/or Renewal Application.
406	Application for Ground Station Authorization in the Aviation Services.
410	Registration of Canadian Radio Station Licensee and Application for Permit to Operate.
410–B	Application for Permit To Operate a Canadian General Radio Station in the United States.
452–R	Application for Renewal of Coast and Ground Services.
480	Application for Civil Air Patrol Radio Station Authorization.
490	Application for Assignment or Transfer of Control.
503	Application for Land Radio Station License in the Maritime Services.
506	Application for Ship Radio Station License.
506–A	Temporary Operating Authority, Ship Radio Station License and Restricted Radiotelephone Operator Permit.
525	Application for Disaster Communications Radio Station Construction Permit and License.
572	Temporary Permit To Operate a Business Radio Station.
572C	Conditional Temporary Authorization To Operate a part 90 Radio Station.
574	Application for Radio Station Authorization in the General Mobile Radio Services.
574–R	Application for Renewal of Radio Station License.
574–T	Temporary Permit To Operate a General Mobile Radio Service System.
577	Temporary Permit To Operate a Part 90 Radio Station.
600	Application for Mobile Radio Service Authorization.
610	Application for Amateur Radio Station and/or Operator License.
610–A	Application for Alien Amateur Radio Licensee for Permit To Operate in the United States.
610–B	Application for Amateur Club, Military Recreation, or Radio Amateur Civil Emergency Service Station License.
660–B	Interim Amateur Permit.
602	Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast).
703	Application for Consent To Transfer of Control of Corporation Holding Construction Permit or Station License (For Station in Services Other Than Broadcast).
714	Supplement to Application for New or Modified Radio Station Authorization (Concerning Antenna Structure Notification to FAA).
820	Application for Exemption from Ship Radio Station Requirements.
845	Amateur Code Credit Certificate.
1046	Assignment of Authorization.

5. Section 1.924 is amended by revising the heading in paragraph (b)(2)(i) and paragraph (b)(2)(vi) and by adding a new paragraph (b)(2)(vii) to read as follows:

§ 1.924 Assignment or transfer of control; voluntary or involuntary.

* * * * *

(b) * * *

(2) * * *

(i) *FCC Form 600.* * * *

(vi) *FCC Form 703.* For consent to transfer control of a corporation holding any type of part 90 license except a license to provide commercial mobile radio service.

(vii) *FCC Form 490.* For consent to transfer control of a corporation holding a part 90 license to provide commercial mobile radio service.

* * * * *

6. Section 1.925 is amended by revising the first sentence of paragraph (g) and (h) to read as follows:

§ 1.925 Application for special temporary authorization, temporary permit, or temporary operating authority.

* * * * *

(g) An applicant for a Business Radio Station license (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) utilizing an already authorized facility may operate the station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 572, after the mailing of a formal application for station license

together with evidence of frequency coordination, if required, to the Commission. * * *

(h) An applicant for a radio station license under part 90, subpart S, of this chapter (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) to utilize an already existing Specialized Mobile Radio System (SMRS) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit, evidenced by a properly executed certification of FCC Form 572 after the mailing of a formal application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

* * * * *

§ 1.1105 [Amended]

7. Section 1.1105 is amended by revising the entries in the table from 2. through 5.n. to read as follows:

Action	FCC form No.	Fee amount	Fee type code	Address
* * * * * * *				
2. Domestic Public Land Mobile Stations [Paging and Radiotelephone Service, Air-ground Radiotelephone Service]:				
a. Application for new or additional facility (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Notification of additional transmitter (per transmitter).	FCC 489	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major amendment of a pending application (per transmitter).	FCC 600	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Application for assignment of authorization or consent to transfer of control:				
(i) First call sign	FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each additional call sign	FCC 490	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Application for partial assignment of authorization (per call sign).	FCC 600 & FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Application for renewal (per call sign)	FCC 405 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Minor modification (per transmitter):				
(i) Notification of minor modification	FCC 489	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Application for minor modification	FCC 600	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Request for special temporary authority (per channel/per location).	Written request & FCC 159.	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Application for extension of construction period (per authorization).	FCC 600	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Notification of commencement of service to subscribers (per notification).	FCC 489	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Application for authority to provide commercial mobile service using broadcast station subcarriers (per application).	FCC 600	115.00	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Application for reinstatement [no longer available].				
o. Application to combine separate authorizations (per call sign).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
p. Application for new or modified standby transmitter (per transmitter/per location).	FCC 600	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
q. 931 MHz nationwide paging renewal [see 2g].				
r. Application for new, modified or renewal general aviation air-ground mobile license (per application).	FCC 409 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
s. Application for 932–932.5/941–941.5 MHz point-to-multipoint channels (per transmitter).	FCC 600	265.00	CMP	Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Common Carrier Bureau, P.O. Box 358924, Pittsburgh, PA 15261–5924.
3. Cellular Systems [Cellular Radiotelephone Service]:				
a. Initial application for new cellular system.	FCC 600	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
b. Application for major modification	FCC 600	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
c. Minor modifications.				
(i) Application for minor modification	FCC 600	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
(ii) Notification of minor modification or commencement of service to subscribers (per notification).	FCC 489	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
d. Application for full or partial assignment of authorization or consent to transfer of control.	FCC 490	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
e. Application for renewal	FCC 405 & FCC 159	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
f. Application for extension of construction period.	FCC 600	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
g. Request for special temporary authority.	Written request & FCC 159.	230.00	CLC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
h. Request to combine cellular geographic service areas (per system).	Written request & FCC 159.	60.00	CBC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
4. Rural Radio [Rural Radiotelephone Service]:				
a. Application for new or additional facility (per transmitter).	FCC 600	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 600	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Major amendment of a pending application (per transmitter).	FCC 600	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Minor modifications:				
(i) Notification of minor modification (per transmitter).	FCC 489	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Application for minor modification (per transmitter).	FCC 600	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Application for assignment of authorization or consent to transfer of control:				
(i) First call sign	FCC 490	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each additional call sign	FCC 490	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial assignment of authorization (per call sign).	FCC 490 & FCC 600	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
f. Application for renewal (per call sign) .	FCC 405 & FCC 159 .	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Application for extension of construction period (per application).	FCC 600	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Notification of commencement of service to subscribers (per notification).	FCC 489	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Request for special temporary authority (per channel/per location).	Written request & FCC 159.	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Application for reinstatement [no longer available].				
k. Application to combine separate authorizations (per call sign).	FCC 600	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 600	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Application for new or modified standby transmitter (per transmitter).	FCC 600	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
5. Offshore Radiotelephone Service:				
a. Application for new or additional facility (per transmitter).	FCC 600	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 600	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill-in transmitters [not available].				
d. Major amendment of a pending application (per transmitter).	FCC 600	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Minor modifications:				
(i) Notification of minor modification (per transmitter).	FCC 489	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Application for minor modification (per transmitter).	FCC 600	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Application for assignment of authorization or consent to transfer of control:				
(i) First call sign	FCC 490	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each additional call sign	FCC 490	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial assignment of authorization (per call sign).	FCC 490 & FCC 600 .	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Application for renewal (per call sign)	FCC 405 & FCC 159 .	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Application for extension of construction period (per application).	FCC 600	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Application for reinstatement [no longer available]				
j. Notification of commencement of service to subscribers (per notification).	FCC 489	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Request for special temporary authority (per channel/per location).	Written request & FCC 159.	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Application to combine separate authorizations (per call sign).	FCC 600	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
m. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 600	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Application for new or modified standby transmitter (per transmitter).	FCC 600	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
*	*	*	*	*

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. New § 20.6 is added to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *45 MHz limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (see § 20.9) shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area.

(b) *SMR spectrum.* To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz channels and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired), except that no more than 10 MHz of SMR spectrum in the 800 MHz SMR service will be attributed to an entity when determining compliance with the cap.

(c) *Significant overlap.* (1) For purposes of paragraph (a) of this section, significant overlap of a PCS licensed service area and CGSA(s) (as defined in § 22.911 of this chapter) or SMR service area(s) occurs when at least 10 percent of the population of the PCS licensed service area, as determined by the 1990 census figures for the counties contained therein, is within the CGSA(s) and/or SMR service area(s).

(2) The Commission shall presume that an SMR service area covers less than 10 percent of the population of a PCS service area if none of the base stations of the SMR licensee is located within the PCS service area. For an SMR licensee's base stations that are located within a PCS service area, the channels licensed at those sites will be presumed to cover 10 percent of the population of the PCS service area, unless the licensee shows that its protected service contour for all of its base stations covers less than 10 percent of the population of the PCS service area.

(d) *Ownership attribution.* For purposes of paragraph (a) of this section, ownership and other interests in broadband PCS licensees, cellular licensees, or SMR licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee if the ownership interest is held by a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women.

(3) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock to any person who has the sole power to sell such stock, and, in the case of stock held in trust, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(4) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(5) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until conversion is effected, except that this provision does not apply in determining whether an entity is a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules.

(6) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(7) Officers and directors of a broadband PCS licensee or applicant, cellular licensee, or SMR licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a broadband PCS licensee or applicant, a cellular licensee, or an SMR licensee shall be considered to have an attributable interest in the broadband PCS licensee or applicant, cellular licensee, or SMR licensee.

(8) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain

exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(e) *Divestiture.* Any party holding controlling or attributable ownership interests in SMR licensees accounting for more than 5 MHz of SMR spectrum may be a party to a broadband PCS application (*i.e.*, have a controlling or attributable interest in a broadband PCS applicant), and such PCS applicant will be eligible for PCS licenses amounting to 40 MHz of broadband PCS spectrum in a geographical area, pursuant to the divestiture procedures set forth in paragraphs (e)(1) through (e)(3) of this section.

(1) The Broadband PCS applicant shall certify on its bidder application that it and all parties to the application will come into compliance with the limitations on spectrum aggregation set forth in this section.

(2) If such an applicant is a successful bidder, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the limitations on spectrum aggregation set forth in this section.

(3) If such an applicant is otherwise qualified, its application will be granted subject to a condition that the licensee shall come into compliance with the limitations on spectrum aggregation set forth in this section within ninety (90) days of final grant.

(i) Parties holding controlling interests in SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the SMR licensee (see § 90.158 of this chapter) by which, if granted, such parties no longer would have an attributable interest in the SMR license. If no such assignment or transfer application is tendered to the Commission within ninety (90) days of final grant, the Commission may consider the short-form certification and the long-form divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the PCS license, cancelling it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS applications hold less than controlling (but still attributable) interests in SMR licensee(s), they shall submit, within ninety (90) days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

Note 1 to § 20.6: For purposes of the ownership attribution limit, all ownership interests in operations that serve at least 10 percent of the population of the PCS service area should be included in determining the extent of a PCS applicant's cellular or SMR ownership.

Note 2 to § 20.6: When a party owns an attributable interest in more than one cellular or SMR system that overlaps a PCS service area, the total population in the overlap area will apply on a cumulative basis.

PART 22—PUBLIC MOBILE RADIO SERVICE

1. The authority citation for Part 22 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 22.105 [Amended.]

2. In § 22.105, Table B–1 is amended by removing the number 401 in the "Form Number" column and, in its place, adding the number 600 in the "Form Number".

3. The following sections of part 22 are amended by removing the term "FCC Form 401" and adding, in its place, the term "FCC Form 600":

(a) 22.115(a)(2);
(b) 22.137(c)(1)(ii);
(c) 22.142(c), introductory text, and (d) introductory text;
(d) 22.357, introductory text;
(e) 22.411(d)(1);
(f) 22.413(b)(1);
(g) 22.415(b)(1);
(h) 22.417(b)(1);
(i) 22.507;
(j) 22.529(a), introductory text and (b) introductory text;
(k) 22.531(c);
(l) 22.709(b), introductory text;
(m) 22.803(a), introductory text, and (b) introductory text;
(n) 22.911(b), introductory text;
(o) 22.929(a), introductory text, and (b), introductory text;
(p) 22.941(c);
(q) 22.947(b), introductory text; and
(r) 22.953(a)(2)(iii).

4. Section 22.131 is revised to read as follows:

§ 22.131 Procedures for mutually exclusive applications.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the Public Mobile Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Public Mobile Services. Additional specific procedures are prescribed in the subparts of this part governing the individual Public Mobile Services (see §§ 22.509, 22.717, and 22.949) and in part 1 of this chapter.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 22.128) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (see § 22.145).

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case

of a one-day window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by that grant, pursuant to § 22.128.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending upon the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 22.128, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in the processing of two or more mutually exclusive applications depends upon the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used, except that, for Phase I unserved area applications in the Cellular Radiotelephone Service, a one-day window filing group is used (see § 22.949).

(4) *Disposition.* If there is only one application in any type of filing group, the Commission may grant that application and dismiss without prejudice any mutually exclusive applications not in the filing group. If there is more than one mutually exclusive application in a filing group, the Commission disposes of these applications as follows:

(i) *Applications in a renewal filing group.* All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) *Applications in a 30-day notice and cut-off filing group.*

(A) If all of the mutually exclusive applications in a 30-day notice and cut-off filing group are applications for initial authorization, and none is an application for facilities in the Rural Radiotelephone Service, the Commission shall administer competitive bidding procedures in accordance with subpart Q of part 1 of this chapter. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a 30-day notice and cut-off filing group is an application for modification or an application for facilities in the Rural Radiotelephone Service, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes of all the applications in the filing group.

(iii) *Applications in a same-day filing group.* If there are two or more mutually exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes of all of the applications in the filing group.

(iv) *Applications in a window filing group.* Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) *Terminology.* For the purposes of this section, terms have the following meanings:

(1) The *filing date* of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) The major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) The application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An *application for initial authorization* is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking;

(iii) Any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block; or

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911), except during the five-year build-out period.

(3) An *application for modification* is any application other than an application for initial authorization or renewal.

5. Section 22.301 is revised to read as follows:

§ 22.301 Station inspection.

Upon reasonable request, the licensee of any station authorized in the Public Mobile Services must make the station and station records available for inspection by authorized representatives of the Commission at any reasonable hour.

6. Section 22.313 is amended by revising paragraph (a)(4), adding a new paragraph (a)(5), and revising paragraphs (b) and (c) to read as follows:

§ 22.313 Station identification.

* * * * *

(a) * * *

(4) Rural subscriber stations using Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service; or

(5) Nationwide network paging stations operating on 931 MHz channels.

(b) For all other stations in the Public Mobile Services, station identification must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour. Transmission of station identification may be temporarily delayed to avoid interrupting the continuity of any public communication in progress, provided that station identification is transmitted at the conclusion of that public communication.

(c) Station identification must be transmitted by telephony using the English language or by telegraphy using the international Morse code, and in a

form that can be received using equipment appropriate for the modulation type employed, and understood without the use of unscrambling devices, except that, alternatively, station identification may be transmitted digitally, provided that the licensee provides the Commission with information sufficient to decode the digital transmission to ascertain the call sign. Station identification comprises transmission of the call sign assigned by the Commission to the station, however, the following may be used in lieu of the call sign.

(1) For transmission from subscriber operated transmitters, the telephone number or other designation assigned by the carrier, provided that a written record of such designations is maintained by the carrier;

(2) For general aviation airborne mobile stations in the Air-Ground Radiotelephone Service, the official FAA registration number of the aircraft;

(3) For stations in the Paging and Radiotelephone Service, a call sign assigned to another station within the same system.

7. Section 22.357 is revised to read as follows:

§ 22.357 Emission types.

Any authorized station in the Public Mobile Services may transmit any emission type provided that the resulting emission complies with the appropriate emission mask. See §§ 22.359 and 22.917.

8. A new § 22.509 is added to read as follows:

§ 22.509 Procedures for mutually exclusive applications in the Paging and Radiotelephone Service.

Mutually exclusive applications in the Paging and Radiotelephone Service, including those that are mutually exclusive with applications in the Rural Radiotelephone Service, are processed in accordance with § 22.131 and with this section.

(a) Applications in the Paging and Radiotelephone Service may be mutually exclusive with applications in the Rural Radiotelephone Service if they seek authorization to operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be "cut off" (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4).

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. If a settlement between the applicants cannot be reached in a reasonable time, the applications may be designated for comparative consideration in a hearing. See § 22.13(c)(4)(ii).

§ 22.541 [Removed]

9. Section 22.541 is removed.

10. Section 22.717 is revised to read as follows:

§ 22.717 Procedure for mutually exclusive applications in the Rural Radiotelephone Service.

Mutually exclusive applications in the Rural Radiotelephone Service, including those that are mutually exclusive with applications in the Paging and Radiotelephone Service, are processed in accordance with § 22.131 and with this section. (a) Applications in the Rural Radiotelephone Service may be mutually exclusive with applications in the Paging and Radiotelephone Service if they seek authorization to operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be "cut off" (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4).

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. if a settlement between the applicants cannot be reached in a reasonable time, the applications may be designated for comparative consideration in a hearing. See § 22.131(c)(4)(ii).

11. Section 22.949 is amended by revising paragraph (a)(2), adding a NOTE following paragraph (a)(2), revising the introductory text of paragraph (b), and revising paragraphs (b)(2), (c), (d)(1) and (d)(3), to read as follows:

§ 22.949 Unserved area licensing process.

* * * * *

(a) * * *

(2) Only one Phase I initial application is granted on each channel block in each market. Consequently, whenever two or more acceptable Phase I initial applications are timely filed in the same market on the same channel block, such Phase I initial applications are mutually exclusive, regardless of any other considerations such as the technical proposals. In order to determine which of such mutually exclusive Phase I initial applications to grant, the Commission administers competitive bidding procedures in accordance with subpart Q of part 1 of this chapter. After such procedures, the application of the winning bidder may be granted and the applications excluded by that grant may be dismissed without prejudice.

Note: Notwithstanding the provisions of § 22.949(a)(2), mutually exclusive Phase I initial applications that were filed between March 10, 1993 and July 25, 1993, inclusive, are to be included in a random selection process, following which the selected application may be granted and the applications excluded by that grant may be dismissed without prejudice.

* * * * *

(b) *Phase II.* Phase II is an on-going filing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete.

* * * * *

(2) There is no limit to the number of Phase II applications that may be granted on each channel block in each market. Consequently, Phase II applications are mutually exclusive only if the proposed CGSAs would overlap. Mutually exclusive applications are processed using the general procedures in § 22.131.

* * * * *

(c) *Settlements among mutually exclusive applicants.* Settlements among some, but not all, applicants with mutually exclusive applications for unserved areas (partial settlements) are prohibited. Settlements among all applicants with mutually exclusive applications (full settlements) are allowed and must be filed no later than fifteen (15) business days before the competitive bidding procedure is scheduled to take place.

(d) * * *

(1) The Commission will not accept amendments (of any type) to mutually exclusive Phase I applications prior to the conclusion of the competitive bidding process.

* * * * *

(3) Minor amendments required by § 1.65 of this chapter must be filed no later than thirty (30) days after public notice announcing the results of the competitive bidding process.

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. The following sections of part 24 are amended by removing the term "FCC Form 401" and adding, in its place, the term "FCC Form 600":

(a) 24.307;
(b) 24.406(b);
(c) 24.409(b);
(d) 24.413(a), introductory text;
(e) 24.426(a);
(f) 24.427(b);
(g) 24.707;
(h) 24.806(b);
(i) 24.809(b);
(j) 24.813(a), introductory text;
(k) 24.826(a); and
(l) 24.827(b).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.5 is amended by redesignating paragraphs (h) through (k) as paragraphs (i) through (l) and adding a new paragraph (h) to read as follows:

§ 90.5 Other applicable rule parts.

* * * * *

(h) Part 20 of this chapter contains rules relating to commercial mobile radio services.

* * * * *

3. Section 90.75 is amended by revising paragraph (a), introductory text, and the third sentence of paragraph (c)(10) to read as follows:

§ 90.75 Business Radio Service.

(a) *Eligibility.* Persons primarily engaged in any of the following activities are eligible to hold authorizations in the Business Radio Service to provide commercial mobile radio service as defined in part 20 of this chapter or to operate stations for transmission of communications necessary to such activities of the licensee:

* * * * *

(c) * * *

(10) * * * Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, to representatives of Federal Government agencies, and foreign governments and their representatives.

* * * * *

4. Section 90.115 is revised to read as follows:

§ 90.115 Foreign government and alien eligibility.

(a) No station authorization in the radio services governed by this part shall be granted to or held by a foreign government or its representative.

(b) No station authorization in the radio services governed by this part shall be granted to or held by an entity providing or seeking to provide commercial mobile radio services (except such entities meeting the requirements of § 20.9(c) of this chapter) if such entity is:

(1) An alien or the representative of any alien;

(2) A corporation organized under the laws of any foreign government;

(3) A corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(4) A corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

5. Section 90.119 is revised to read as follows:

§ 90.119 Application forms.

The following application forms shall be used—

(a) Form 600 shall be used to apply:

(1) For new base, fixed, or mobile station authorizations governed by this part.

(2) For system authorizations, where the system meets the requirements of § 90.117.

(i) Application for a radio system may be submitted on a single Form 600.

(ii) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above ground or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations which may be authorized. Appropriate items on Form 600 shall be completed showing the frequency, the station class, the total number of control stations, the emission, and the output power of the highest powered control station. Applicants for all control stations in the 470–512 MHz band must furnish the information requested in the relevant items in Form 600.

(3) For modification or for modification and renewal of an existing authorization. See § 90.135.

(4) For the Commission's consent to the assignment of an authorization to another person or entity, except for authorization to provide commercial mobile radio service. In addition, the application shall be accompanied by a letter from the assignor setting forth his or her desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of the station, and stating that the assignor will submit his or her current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter.

(5) For reinstatement of an expired license. See also paragraphs (b)(1) and (e) of this section.

(b) Form 405–A shall be used to:

(1) Apply for license reinstatement or renewal if the reinstatement or renewal does not involve the modification of the station or system license.

(2) Notify the Commission of a change in the licensee's name or mailing address that occurs during the license term. See § 90.135(b).

(3) Notify the Commission that the licensee has discontinued station operation and wishes to cancel the license. See § 90.157.

(c) Form 490 shall be used whenever it is proposed that a licensee for a commercial mobile radio service in this part change, as by transfer of stock ownership, the control of a corporate licensee or for the Commission's consent to an assignment of an authorization to another person or entity.

(d) Form 572, Temporary Permit to Operate a Part 90 Radio Station, should be properly executed if the applicant is eligible and desires to operate his or her station pending the processing of his or her formal application. See also §§ 90.159, and 90.657.

(e) Form 574–R shall be used to apply for renewal of an existing authorization and may be used to apply for reinstatement of an expired license, if the renewal or reinstatement does not involve the modification of the station or system license. (Form 574–R is generated by the Commission and mailed to the licensee prior to the expiration of the license term.)

6. Section 90.131 is amended by adding introductory text before paragraph (a) to read as follows:

§ 90.131 Amendment or dismissal of applications.

This rule governs all applications relating to radio services in this part, including applications filed by entities meeting the requirements of § 20.9(c) of this chapter, except applications concerning facilities used to provide commercial mobile radio services, which are governed by § 90.161.

* * * * *

7. Section 90.135 is amended by revising paragraph (c) to read as follows:

§ 90.135 Modification of license.

* * * * *

(c) Unless specifically exempted in § 90.175, requests for modifications listed in paragraph (a) of this section must be submitted on Form 600 to the applicable frequency coordinator.

* * * * *

8. Section 90.145 is amended by revising the first sentence of paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 90.145 Special temporary authority.

* * * * *

(c) Requests for special temporary authority to operate as a private mobile radio service provider for periods exceeding 180 days require evidence of frequency coordination.* * *

(d) A request for special temporary authority to operate a commercial mobile radio facility under this part may be granted without being listed in a Public Notice, or prior to thirty (30) days after such listing, if:

(1) The STA is to be valid for thirty (30) days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(2) The STA is to be valid for sixty (60) days or less, pending the filing of an application for regular authorization of the subject operation;

(3) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(e) The Commission may grant STAs to operate a commercial mobile radio facility for a period not to exceed one hundred eighty (180) days under the provisions of Section 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. 309(f), if extraordinary circumstances so require, and pending the filing of an application for regular operation. The Commission may grant extensions for an additional period of up to one hundred eighty (180) days, but the applicant must show that extraordinary circumstances warrant such an extension.

9. Section 90.149 is amended by revising paragraph (a) to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five (5) years from the date of the original issuance, modification, or renewal, except that the license term for stations licensed as commercial mobile radio service on 220–222 MHz, 929–930 MHz paging, Business Radio, and SMR frequencies shall be ten (10) years. Licensees shall have an additional thirty (30) days after the expiration of the license term to apply for reinstatement of expired licenses.

* * * * *

10. Section 90.153 is amended by adding a last sentence to the existing paragraph, and adding paragraphs (a), (b), (c) and (d) to read as follows:

§ 90.153 Transfer or assignment of station authorization.

* * * The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization to be assigned.

(a) *Application required.* The assignor or transferor of a commercial mobile radio license under this part must file an application for approval of assignment or transfer of control (Commission Form 490). In the case of involuntary assignment, such application must be filed no later than thirty (30) days after the event causing the assignment. The assignee or transferee must file a report qualifying it as a commercial mobile radio provider (Commission Form 430) unless a current report is already on file with the Commission.

(b) *Notification of completion.* Assignments and transfers of control of commercial mobile radio licenses must be completed within sixty (60) days of Commission approval. The assignee or transferee must notify the Commission by letter of the date of completion of the assignment or transfer of control. If an assignment or transfer of control is not completed within this time, the assignor or transferor must so notify the Commission by letter, and the assignee or transferee must submit the authorization(s) to the Commission for cancellation or request an extension of time to complete the assignment or transfer of control. If the assignment or transfer of control is not completed, the authorization(s) remain with the assignor or transferor.

(c) *Partial assignment of authorization.* If the authorization for some, but not all, of the facilities of a commercial mobile radio station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(1) To request Commission approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (a) of this section:

(i) The assignor must notify the Commission (Commission Form 600) of the facilities to be deleted from its authorization upon completion of the assignment.

(ii) The assignee must apply for authority (Commission Form 600) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

(2) Partial assignments must be completed within sixty (60) days of Commission approval. If an approved partial assignment is not completed within this time, the assignor must notify the Commission (Commission Form 600), and the assignee must submit the authorization(s) to the Commission for cancellation or request an extension of time to complete the assignment. If the assignment is not completed, the authorization(s) remain with the assignor.

(d) *Limitations.* The Commission may deny applications for assignment of authorization or consent to transfer of control of a commercial mobile radio license if:

(1) The Commission is unable to make the public interest determinations required under the Communications Act with respect to both parties to the assignment or transfer; or

(2) The authorization was obtained for the principal purpose of speculation or profitable resale, rather than provision of commercial mobile radio services to the public.

11. Section 90.155 is amended by revising paragraph (a) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except stations authorized in the 220–222 MHz, 929–930 MHz paging, Business Radio, and SMR services, and except as provided in paragraph (b) of this section and in §§ 90.629 and

90.631(f), must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. For stations authorized to 220–222 MHz, 929–930 MHz paging, Business Radio, and SMR licensees, see § 90.167.

* * * * *

12. Section 90.159 is amended by revising the first sentence in paragraphs (a), (b), and (c) to read as follows:

§ 90.159 Temporary and conditional permits.

(a) An applicant for a license under this part (other than a commercial mobile radio license) utilizing an already licensed facility may operate the radio station(s) for a period of up to one hundred eighty (180) days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with § 90.127, provided that all the antennas employed by control stations are 6.1 meters (20 feet) or less above ground or 6.1 meters (20 feet) or less above a man-made structure other than an antenna tower to which it is affixed. * * *

(b) An applicant proposing to operate a new land mobile station or modify an existing station below 470 MHz or in the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) that is required to submit a frequency recommendation pursuant to paragraphs (a) through (e) of § 90.175 may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127 if the application is accompanied by evidence of frequency coordination in accordance with §§ 90.175 and 90.176, and provided that the following conditions are satisfied: * * *

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station below 470 MHz or in the 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) may operate the proposed station during the pendency of the application for a period not to exceed one hundred eighty (180) days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127. * * *

* * * * *

13. Part 90 is amended by adding a center heading and a note after § 90.159 to read as follows:

Special Rules Governing Facilities Used To Provide Commercial Mobile Radio Services

Note: The following rules (§ 90.160 through § 90.169) govern applications, licensing, and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (Subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (Subpart S) services that are used to provide commercial mobile radio services (see §§ 20.3 and 20.9 of this chapter). Compliance with the rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see § 90.75(c)(10)) and 929–930 MHz paging channels (see § 90.494(a),(b)) is not required prior to August 10, 1996. Compliance with Section 90.168 is also not required prior to August 10, 1996 for reclassified commercial mobile radio service providers who are to be regulated as private carriers until August 10, 1996 as provided in the Second Report and Order in GN Docket No. 93–252, 9 FCC Rcd 2348 (1994), paras. 280–284. The licensing and operation of radio facilities in the 220–222 MHz (Subpart T), Business Radio (Subpart D), 929–930 MHz Paging (Subpart P), and Specialized Mobile Radio (Subpart S) services that are used to provide commercial mobile radio services are also subject to rules elsewhere in this part that apply generally to Private Land Mobile Radio Services. In the case of any conflict between rules set forth in §§ 90.160 through 90.169 and other rules in this part, §§ 90.160 through 90.169 apply.

14–23. New §§ 90.160 through 90.169 are added to subpart G to read as follows:

§ 90.160 Public notice.

Periodically, the Commission will issue Public Notices listing major filings and other information of public significance concerning commercial mobile radio services licensed under this part. Categories of Public Notice listings are as follows:

(a) *Accepted for filing.* Acceptance for filing of all applications and major amendments thereto.

(b) *Actions.* Commission actions on pending applications previously listed as accepted for filing.

(c) *Informative listings.* Information that the Commission, in its discretion, believes to be of public significance. Such listings do not create any rights to file oppositions or other pleadings.

§ 90.161 Amendment or dismissal of applications.

(a) *Amendment.* Pending applications concerning facilities for providing commercial mobile radio services may be amended as a matter of right if such applications have not been designated for hearing or listed in a Public Notice for a random selection or competitive bidding process, except as provided in paragraphs (a)(1) and (a)(2) of this section. If a petition to deny or other formal objection has been filed, a copy of any amendment (or other filing) must be served on the petitioner. If the Commission has issued a Public Notice stating that the application appears to be mutually exclusive with another application (or applications), a copy of any amendment (or other filing) must be served on any such mutually exclusive applicant (or applicants).

(1) Amendments to applications that resolve mutual exclusivity may be filed at any time, subject to the requirements of § 90.162.

(2) Amendments to applications designated for hearing may be allowed by the presiding officer and amendments to applications selected in a random selection process may be allowed by the Commission for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

(b) *Dismissal.* The Commission may dismiss any application for authorization, assignment of authorization, or consent to transfer of control of a commercial mobile radio facility.

(1) Upon request by the applicant; Any applicant may request that its application be returned or dismissed. A request for the return of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(i) If the applicant requests dismissal of its application with prejudice, the Commission will dismiss the application with prejudice.

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless

(A) The application has been designated for comparative hearing;

(B) It has been selected in a random selection process; or

(C) It is an application for which the applicant submitted the winning bid in a competitive bidding process. If the applicant requests dismissal of its application for which it submitted the winning bid in a competitive bidding process, the Commission will dismiss that application with prejudice. If the applicant requests dismissal of its application after that application has been designated for comparative hearing or selected in a random selection process, it may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause, comply with § 90.162 of this part, and be served upon

all parties of record. The Commission may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(2) If the application is untimely filed; The Commission may dismiss without prejudice any application that is prematurely or filed late, including any application filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

(3) If the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part; The Commission may dismiss any mutually exclusive application:

(i) For which the applicant did not submit the winning bid in a competitive bidding process;

(ii) That is included in a random selection process but is not granted; or

(iii) That receives comparative consideration in a hearing but is not granted by order of the presiding officer.

(4) For failure to prosecute; The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing or prior to selection of the application in a random selection process, but may be with prejudice in cases of non-compliance with § 90.162. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing or after selection of the application in a random selection process. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(5) If the requested spectrum is not available; The Commission may dismiss any application that requests spectrum which is unavailable because:

(i) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing interference; or

(ii) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(6) If the application is found to be defective. Such dismissal may be "without prejudice," meaning that the Commission may accept from the applicant another application for the same purpose at any later time, or "with prejudice," meaning that the Commission will not accept from the applicant another application for the same purpose for a period of one year following the date of the dismissal action taken by the Commission. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant. The Commission may dismiss without prejudice applications that it finds to be defective. An application for authorization or assignment of authorization is defective if:

(i) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character; or

(ii) It requests an authorization that would not comply with the Commission's Rules and does not contain a request for waiver of these rule(s), or in the event that the Commission denies such a waiver request, does not contain an alternative proposal that fully complies with the rules.

§ 90.162 Agreements to dismiss applications, amendments, or pleadings.

(a) Parties that have filed an application concerning facilities used to provide commercial mobile radio services that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the Commission. Parties that have filed or threatened to file a petition to deny, informal objection, or other pleading against a pending application, and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission.

(b) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection, or other pleading, or refraining from filing a pleading, must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection, or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements:

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading or threat to file a pleading.

(c) In addition, within five (5) days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection, or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading.

(d) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition against an application. For purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(e) For purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(2) Applications, petitions to deny, informal objections, and other pleadings are deemed to be pending before the

Commission from the time the application or petition to deny is filed with the Commission until such time as an order of the Commission granting, denying, or dismissing the application, petition to deny, informal objection, or other pleading is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection, or other pleading for which reimbursement is sought.

(4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

§ 90.163 Petitions to deny, responsive pleadings.

Petitions to deny any major filing concerning facilities used to provide commercial mobile radio services may be filed by parties able to demonstrate standing to file such petitions. Responsive pleadings to such petitions may be filed in accordance with the provisions of this section.

(a) *Content and requirements.* Petitions to deny and responsive pleadings must:

(1) Clearly identify the pertinent major filing(s);

(2) Comply with all applicable requirements of §§ 1.41 through 1.52 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, are supported by affidavit of a person or persons with personal knowledge thereof, and which are sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant or other Commission action regarding the major filing would be inconsistent with the public interest;

(4) Be filed within 30 days after the date of the Public Notice listing the major filing; and

(5) Contain a certificate of service showing that a copy has been mailed to the applicant no later than the date of filing with the Commission.

(b) *Expansion.* Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(c) *Dismissal.* The Commission may, by letter, dismiss any petition to deny a major filing if the petition does not comply with the requirements of this section or § 90.161. The reason(s) for the dismissal must be stated in the letter. When a petition to deny is dismissed, any related responsive pleadings also are dismissed.

§ 90.164 Classification of filings as major or minor.

Applications and amendments to applications are classified as major or minor when such filings concern facilities used to provide commercial mobile radio services. Categories of major and minor filings are listed in section 309 of the Communications Act of 1934, as amended (47 U.S.C. 309). In general, a major filing is a request for a Commission action that has the potential to affect parties other than the applicant. The following are major filings:

(a) *Initial station authorization.* Filings for an initial authorization as defined in § 90.165(d)(2) are major.

(b) *Ownership or control change.* Filings are major if they specify a substantial change in beneficial ownership or control (de jure or de facto), unless such change is involuntary or if the filing merely amends an application to reflect a change in ownership or control that has already been approved by the Commission.

(c) *Renewal.* Applications for renewal of authorizations are major.

(d) *Environmental.* Filings are major if they request authorization for a facility that would have a significant environmental effect, as defined by §§ 1.1301 through 1.1319 of this chapter.

(e) In the Specialized Mobile Radio Service, in addition to filings listed in paragraphs (a) through (d) of this section, filings are major if they:

(1) Request a change in frequency;

(2) Request an authorization that would increase the effective radiated power or antenna height above average terrain in any azimuth from an existing transmitter authorized to the filer;

(3) Request an authorization that would relocate an existing fixed transmitter;

(4) Amend a pending application to change a requested frequency;

(5) Amend a pending application in a way that would increase the proposed effective radiated power or antenna height above average terrain in any azimuth from an existing transmitter authorized to the filer;

(6) Amend a pending application to change the location of a fixed transmitter from that previously proposed in the application; or

(7) Amend a pending application for which pre-filing coordination was required to change the technical proposal substantially from that which was coordinated with other users.

§ 90.165 Procedures for mutually exclusive applications.

Mutually exclusive commercial mobile radio service applications are processed in accordance with the rules in this section, except for mutually exclusive applications for licenses in the 220–220 MHz service and the 929–930 MHz Paging service, which are processed in accordance with the rules in subpart P and subpart T of this part.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 90.162) any mutually exclusive applications(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications.

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed applications(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later

than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by the grant, pursuant to § 90.162.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending on the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 90.162, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications depends on the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used.

(4) *Disposition.* If there is only one application in any type of filing group, the Commission may grant that application and dismiss without prejudice any mutually exclusive applications not in the filing group. If there is more than one mutually exclusive application in a filing group, the Commission disposes of these applications as follows:

(i) Applications in a renewal filing group. All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) Applications in a 30-day notice and cut-off filing group.

(A) If all of the mutually exclusive applications in a 30-day notice and cut-off filing group are applications for initial authorization, the Commission administers competitive bidding procedures in accordance with subpart Q of part 1 of this chapter. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a 30-day notice and cut-off filing group is an application for modification or an application for facilities, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iii) Applications in a same-day filing group. If there are two or more mutually exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iv) Applications in a window filing group. Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) *Terminology.* For the purposes of this section, terms have the following meanings:

(1) The "filing date" of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) The major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) The application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An "application for initial authorization" is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking; or

(iii) any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block.

(3) An "application for modification" is any application other than an application for initial authorization or renewal.

§ 90.166 Grants of applications.

Applications for a commercial mobile radio service authorization under this part may be granted thirty (30) days after the issuance date of a Pubic Notice listing an application or the latest filed major amendment thereto as acceptable for filing.

(a) *Criteria for grants.* The Commission grants applications without a hearing if, after examination of the application and consideration of any petitions or other pleadings and of such other matters as it may officially notice, the Commission finds that:

(1) A grant will serve the public interest, convenience, and necessity;

(2) There are no substantial and material questions of fact presented;

(3) The applicant is eligible and qualified under applicable Commission regulations and policies;

(4) The application is acceptable for filing, and complies with the Commission rules and other applicable requirements;

(5) The application has not been designated for a hearing after being selected in a random selection process;

(6) There are no applications entitled to comparative consideration with the application being granted; and

(7) Operation of the proposed station would not cause interference to any authorized station(s).

(b) *Grant of petitioned applications.* The Commission may grant, without a

formal hearing, applications against which petitions to deny have been filed. If any petition(s) to deny are pending (*i.e.*, have not been dismissed pursuant to § 90.161 or withdrawn by the petitioner) when an application is granted, the Commission shall deny the petition(s) and issue a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(c) *Partial and conditional grants.* The Commission may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the Commission does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the Commission revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(d) *Designation for hearing.* The Commission may designate applications for a hearing, specifying with particularity the matters in issue, if, after consideration of the application, any petitions or other pleadings, and other matters which it may officially notice, the Commission is unable to make one or more of the findings listed in paragraph (a) of this section. The Commission may grant, deny, or take other action with respect to applications designated for a hearing.

§ 90.167 Time in which a station must commence service.

(a) Unless otherwise specified in this part, all 220–222 MHz, private carrier paging, Business Radio, and SMR licensees must commence service within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(c) Application for extension of time to commence service may be made on Commission Form 600. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond his or her control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(d) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on Commission Form 600, either separately or in conjunction with the submission of the Commission Form 600 requesting modification.

§ 90.168 Equal employment opportunities.

Commercial Mobile Radio Services licensees shall afford equal opportunity in employment to all qualified persons, and personnel must not be discriminated against in employment because of sex, race, color, religion, or national origin.

(a) *Equal employment opportunity program.* Each licensee shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice.

(1) Under the terms of its program, each licensee shall:

(i) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(ii) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(iii) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion or national origin, and solicit their recruitment assistance on a continuing basis.

(iv) Conduct a continuing campaign to exclude every form of prejudice or discrimination based upon sex, race, color, religion, or national origin, from the licensee's personnel policies and practices and working conditions.

(v) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(2) The program must reasonably address specific concerns through policies and actions as set forth in this paragraph, to the extent that they are appropriate in consideration of licensee size, location and other factors.

(i) To assure nondiscrimination in recruiting.

(A) Posting notices in the licensee's offices informing applicants for employment of their equal employment rights and their right to notify the Equal Employment Opportunity Commission (EEOC), the Federal Communications Commission (Commission), or other appropriate agency. Where a substantial number of applicants are Spanish-surnamed Americans, such notice should be posted in both Spanish and English.

(B) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited, and that they may notify the EEOC, the Commission, or other appropriate agency if they believe they have been discriminated against.

(C) Placing employment advertisements in media which have significant circulation among minority groups in the recruiting area.

(D) Recruiting through schools and colleges with significant minority group enrollments.

(E) Maintaining systematic contacts with minority and human relations organizations, leaders and spokespersons to encourage referral of qualified minority or female applicants.

(F) Encouraging present employees to refer minority or female applicants.

(G) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members are being sought for consideration whenever the licensee hires.

(ii) To assure nondiscrimination in selection and hiring.

(A) Instructing employees of the licensee who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

(B) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements.

(C) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iii) To assure nondiscriminatory placement and promotion.

(A) Instructing employees of the licensee who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination.

(B) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions.

(C) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect.

(D) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iv) to assure nondiscrimination in other areas of employment practices.

(A) Examining rates of pay and fringe benefits for present employees with equivalent duties and adjusting any inequities found.

(B) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(b) *EEO statement.* Each licensee having sixteen (16) or more full-time employees shall file with the Commission, no later than May 31st following the grant of that licensee's first Commercial Mobile Radio Services authorization, a statement describing fully its current equal employment opportunity program, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion, or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination. Any licensee having sixteen (16) or more full-time employees that changes its existing equal employment opportunity program shall file with the Commission, no later than May 31st thereafter, a revised statement reflecting the change(s).

Note: Commercial mobile radio service licensees having sixteen (16) or more full-time employees that do not have a current EEO statement on file with the Commission as of January 2, 1995, must file the statement required by this paragraph no later than May 31, 1995.

(c) *Report of complaints filed against licensees.* Each licensee, regardless of how many employees it has, shall submit an annual report to the Commission no later than May 31st of each year indicating whether any complaints regarding violations by the licensee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(1) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(2) Any licensee who has filed such information with the EEOC may file a notification of such filing with the Commission in lieu of a report.

(d) *Complaints of violations of Equal Employment Programs.* Complaints alleging employment discrimination against a common carrier licensee are considered by the Commission in the following manner:

(1) If a complaint raising an issue of discrimination is received against a licensee who is within the jurisdiction of the EEOC, it is submitted to that agency. The Commission maintains a liaison with that agency that keeps the Commission informed of the disposition of complaints filed against common carrier licensees.

(2) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the Commission to the respective State agency.

(3) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC or an appropriate State law, are accorded appropriate treatment by the Commission.

(4) The Commission will consult with the EEOC on all matters relating to the evaluation and determination of compliance by the common carrier licensees with the principles of equal employment as set forth herein.

(5) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee that is required to file an employment report to the Commission under § 1.815(a) of this chapter are investigated by the Commission.

(e) *Commission records.* A copy of every annual employment report, equal employment opportunity program statement, reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(f) *Licensee records.* Each licensee required to file annual employment reports (pursuant to § 1.815(a) of this chapter), equal employment opportunity program statements, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain for public inspection a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference. The documents must be retained for a period of two (2) years.

§ 90.169 Construction prior to grant of application.

Applicants may construct facilities prior to grant of their applications, subject to the provisions of this section, but must not operate such facilities until the Commission grants an authorization. If the conditions stated in this section are not met, applicants must not begin to construct facilities.

(a) *When applicants may begin construction.* An applicant may begin construction of a facility thirty-five (35) days after the date of the Public Notice listing the application for that facility as acceptable for filing.

(b) *Notification to stop.* If the Commission for any reason determines that construction should not be started or should be stopped while an application is pending, and so notifies the applicant, orally (followed by written confirmation) or in writing, the applicant must not begin construction or, if construction has begun, must stop construction immediately.

(c) *Assumption of risk.* Applicants that begin construction pursuant to this section before receiving an authorization do so at their own risk and have no recourse against the United States for any losses resulting from:

(1) Applications that are not granted;

(2) Errors or delays in issuing Public Notices;

(3) Having to alter, relocate, or dismantle the facility; or

(4) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws, or Commission rules and orders.

(d) *Conditions.* Except as indicated, all pre-grant construction is subject to the following conditions:

(1) The application is not mutually exclusive with any other application;

(2) No petitions to deny the application have been filed;

(3) The application does not include a request for a waiver of one or more Commission rules;

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the Commission;

(5) The applicant has indicated in the application that the proposed facility would not have a significant environmental effect, in accordance with §§ 1.1301 through 1.1319 of this chapter; and,

(6) Under applicable international agreements and rules in this part, individual coordination of the proposed channel assignment(s) with a foreign administration is not required.

24. Section 90.179 is amended by adding a new paragraph (g) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(g) The provisions of this section do not apply to licensees authorized to provide commercial mobile radio service under this part.

25. Section 90.403 is amended by revising paragraph (c) to read as follows:

§ 90.403 General operating requirements.

* * * * *

(c) Except for stations that have been granted exclusive channels under this part and that are classified as commercial mobile radio service providers pursuant to part 20 of this chapter, each licensee must restrict all transmissions to the minimum practical transmission time and must employ an efficient operating procedure designed to maximize the utilization of the spectrum.

* * * * *

26. Section 90.405 is amended by revising paragraph (b) to read as follows:

§ 90.405 Permissible communications.

* * * * *

(b) The provisions contained in paragraph (a) of this section do not apply where a single base station licensee has been authorized to use a channel above 470 MHz on an exclusive basis, or to stations licensed under this part that are classified as CMRS providers under part 20 of this chapter.

27. Section 90.415 is amended by revising paragraph (b) to read as follows:

§ 90.415 Prohibited uses.

* * * * *

(b) Render a communications common carrier service, except for stations in the Special Emergency Radio Service providing communications standby facilities under § 90.49, operational fixed stations licensed in the Railroad Radio Service handling public telegraph messages as agents of telegraph common carriers in those instances where such public telegraph service cannot be provided through other railroad facilities, and stations licensed under this part in the SMR, private carrier paging, Business Radio, or 220–222 MHz services.

28. Section 90.425 is amended by adding paragraph (e) to read as follows:

§ 90.425 Station identification.

* * * * *

(e) Special provisions for stations licensed under this part that are classified as CMRS providers under part 20 of this chapter.

(1) Station identification will not be required for 929–930 MHz nationwide paging licensees and MTA-based SMR licensees. All other CMRS stations will be required to comply with the station identification requirements of paragraphs (a) through (d) of this section.

(2) CMRS stations subject to a station identification requirement will be permitted to use a single call sign for commonly owned facilities that are operated as part of a single system. The call sign must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour.

(3) CMRS stations granted exclusive channels may transmit their call signs digitally. The station licensee must provide the Commission with information sufficient to decode the digital transmission to ascertain the transmitted call sign.

29. Section 90.437 is amended by revising paragraphs (b) and (c) to read as follows:

§ 90.437 Posting station licenses.

* * * * *

(b) Entities authorized under this part must make available either a clearly legible photocopy of the authorization for each base or fixed station at a fixed location at every control point of the station or an address or location where the current authorization may be found.

(c) Entities operating under a temporary permit authorized in accordance with § 90.159 shall post an executed copy of the Form 572 at every control point of the system or an address or location where the current executed copy may be found.

* * * * *

30. Section 90.449 is revised to read as follows:

§ 90.449 Answers to official communications and notices of violation.

(a) Licensees are required to respond to official communications with reasonable dispatch and according to the tenor of the communication. Failure to do so may be considered by the Commission to reflect adversely on a person's qualifications to hold Commission authorizations and may also create liabilities for other sanctions.

(b) Any licensee receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any legislative act or treaty to which the United States is a party, or the rules and regulations of the Commission, shall, within ten (10) days from such receipt or such other period as may be specified by the Commission, send a written answer to the office of the Commission originating the original notice. If an answer cannot be sent, or an acknowledgement made, within such period, acknowledgement and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. The reply shall set forth the steps taken to prevent a recurrence of improper operation.

31. Section 90.476 is amended by adding paragraph (c) to read as follows:

§ 90.476 Interconnection of fixed stations and certain mobile stations.

* * * * *

(c) The provisions of this section do not apply to commercial mobile radio service providers, as defined in part 20 of this chapter.

32. Section 90.483 is amended by revising the introductory paragraph to read as follows:

§ 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

Interconnection may be accomplished by commercial mobile service providers licensed under this part by any technically feasible means. Interconnection may be accomplished by private mobile service providers either manually or automatically under the supervision and control of a transmitter control operator at a fixed position in the authorized system of communications or it may be accomplished under the supervision and control of mobile operators, and is subject to the following provisions:

* * * * *

33. Section 90.494 is amended by revising paragraph (c) to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

* * * * *

(c) All frequencies listed in this section may be used to provide one-way paging communications to persons eligible for licensing under subpart B, C, D, or E of this part, representatives of Federal Government agencies, individuals, and foreign governments and their representatives. The provisions of § 90.173(b) apply to all frequencies listed in this section.

* * * * *

34. Section 90.603 is amended by revising paragraph (c) to read as follows:

§ 90.603 Eligibility.

* * * * *

(c) Any person, except wireline telephone common carriers, eligible under this part and proposing to provide on a commercial basis base station and ancillary facilities as a Specialized Mobile Radio System operator, for the use of individuals, Federal Government agencies, foreign governments and their representatives, and persons eligible for licensing under subparts B, C, D, or E of this part.

35. Section 90.607 is amended by revising the introductory text of paragraphs (b) and (c) to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(b) Except for applicants for SMR licenses, all applicants for conventional radio systems must:

* * * * *

(c) Except for applicants for SMR licenses, all applicants for trunked systems must:

* * * * *

36. Section 90.623 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 90.623 Limitations on the number of frequencies assignable for conventional systems.

* * * * *

(c) No non-SMR licensee will be authorized an additional frequency pair for a conventional system within 64 kilometers (40 miles) of an existing conventional system, except where:

* * *

* * * * *

37. Section 90.627 is amended by revising the introductory text of paragraph (b), removing "; or," and adding in its place "." at the end of paragraph (b)(2) and removing paragraph (b)(3) to read as follows:

§ 90.627 Limitation on the number of frequency pairs that may be assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) No non-SMR licensee will be authorized an additional trunked system within 64 kilometers (40 miles) of an existing trunked system, except where:

* * * * *

38. Section 90.631 is amended by revising the first sentence of paragraph (a), and revising paragraphs (b) and (c) to read as follows:

§ 90.631 Trunked systems loading, construction, and authorization requirements.

(a) Non-SMR trunked systems will be authorized on the basis of a loading criteria of one hundred (100) mobile stations per channel. * * *

(b) Each applicant for a non-SMR trunked system must certify that a minimum of seventy (70) mobiles for each channel authorized will be placed into operation within five (5) years of the initial license grant. Except for SMR systems licensed in the 806–821/851–866 MHz band and as indicated in paragraph (i) of this section, if at the end of five (5) years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorizations for trunked channels not loaded to seventy (70) mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every one hundred (100) mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All non-SMR licensees initially authorized before June 1, 1993, that are within their original license term, or SMR licensees that are within the term of a two-year authorization granted in accordance with paragraph (i) of this section, are subject to this condition. A licensee that has authorized channels cancelled due to failure to meet the above loading requirements will not be authorized additional channels to expand that same system for a period of six (6) months from the date of cancellation.

(c) Except for SMR applicants and as provided in paragraph (d) of this section, an applicant seeking to expand a trunked system by requesting additional channels from the Commission, or through intercategory sharing, or through an assignment, must have a loading level of seventy (70) mobiles per channel on the existing system that is the subject of the expansion request.

* * * * *

39. Section 90.633 is amended by revising paragraph (a), and the first sentence of paragraph (e) to read as follows:

§ 90.633 Conventional systems loading requirements.

(a) Non-SMR conventional systems of communication will be authorized on the basis of a minimum loading criteria of seventy (70) mobile stations for each channel authorized.

* * * * *

(e) A non-SMR licensee may apply for additional frequency pairs if its authorized conventional channel(s) is loaded to seventy (70) mobiles.* * *

* * * * *

40. Section 90.645 is amended by revising paragraph (c) to read as follows:

§ 90.645 Permissible operations.

* * * * *

(c) Except for licensees classified as CMRS providers under part 20 of this chapter, only for the transmission of messages or signals permitted in the services is which the participants are eligible.

* * * * *

41. Section 90.703 is amended by revising paragraph (c) to read as follows:

§ 90.703 Eligibility.

* * * * *

(c) Any person, except wire line telephone common carriers, eligible under this part and proposing to provide on a commercial basis base station and ancillary facilities as a Specialized Mobile Radio System operator, for the use of individuals, Federal Government agencies, foreign governments and their representatives, and persons eligible for licensing under subparts B, C, D or E of this part.

42. Section 90.733 is amended by revising paragraph (a)(3) to read as follows:

§ 90.733 Permissible operations.

(a) * * *

(3) Except for licensees classified as CMRS providers under Part 20 of this chapter, only for the transmission of messages or signals permitted in the services in which the participants are eligible.

* * * * *

[FR Doc. 94–28199 Filed 11–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; Correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) is correcting errors made in the September 1, 1994, **Federal Register** (59 FR 45588) on early seasons and bag and possession limits for certain migratory game birds in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Alabama erroneously selected season dates and shooting hours for mourning doves in the North Zone of September 17–October 30 and December 26–January 10 from 12 noon to sunset, and no dates for shooting hours of ½ hour before sunrise to sunset.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on September 1, on page 45590, under Alabama, the mourning dove season dates in the North Zone are corrected to read for shooting hours of 12 noon to sunset as September 17, October 1–October 30, and December 26–January 10; and for shooting hours of ½ hour before sunrise to sunset as September 18–September 30. The daily bag and possession limit is 15.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–28700 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 94111–4311; I.D. 102494B]

Atlantic Sea Scallop Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 2 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This rule implements an exemption from Federal gear regulations for vessels when fishing in state waters under a state scallop management program.

EFFECTIVE DATE: November 16, 1994.

ADDRESSES: Copies of Amendment 4 to the FMP, and its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), final supplemental environmental impact statement (FSEIS), and Framework Adjustment 2 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this final rule should be sent to Allen E. Peterson, Jr., Acting Regional Director, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (Attention NOAA Desk Officer), Washington, D.C. 20503.

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

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was approved on November 5, 1993, and implemented on March 1, 1994. Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The FMP controls total fishing effort through limited entry and a schedule of reductions in allowable time at sea. Supplemental measures include gear restrictions, limits on the number of crew members, and vessel restrictions. There are also catch limits for vessels not in the limited access fishery and a framework procedure for adjusting all the management measures in the FMP.

This framework adjustment exempts Federal permit holders from Federal gear restrictions when fishing in state waters under a state management program that has been determined by NMFS not to jeopardize the fishing mortality/effort reduction objectives of the FMP. The principal gear restrictions from which participants in the program are exempted are minimum ring size requirements, restrictions on dredge width, the use of chafing gear, ring configuration and linkage restrictions, and restrictions on spare dredges and nets.

Current state management measures in Maine and Massachusetts and the restrictions proposed by New Hampshire have been determined by NMFS not to jeopardize the fishing mortality/effort reduction objectives of the FMP. All have restrictions that are adequate to address Federal conservation and management concerns because they have overall gear requirements that are more restrictive than Federal regulations and because they apply to scallop resources that are predominantly in state waters. Massachusetts and New Hampshire management measures, in particular, are more restrictive because both include a minimum 3¼-inch (83-mm) ring size requirement in addition to other restrictions on dredge size. The Gulf of Maine and Cape Cod stocks of sea scallops are separate from the major stocks on Georges Bank and in the Mid-Atlantic area, and therefore are not included in the rebuilding program for the fishery. Based on landings, approximately 80 percent of the Gulf of Maine fishery takes place in state waters and its management is predominately a state responsibility.

The purpose of this action is to allow Federal permit holders to compete in the state waters fishery on a more equitable basis where Federal and state laws are inconsistent and to encourage

vessels with general category permits to fish under the exemption program and continue to submit catch and effort data. Not implementing an exemption could force general category vessels that target scallops to cancel their Federal permits and be exempt from all Federal requirements, including reporting of landings while fishing in state waters. These vessels are able to re-apply for a general category permit at anytime. Conversely, limited access permit holders that voluntarily relinquish their permits can not re-apply.

Without this exemption, the most significant inconsistency between the requirements of Federal vs. state sea scallop fishery permit holders occurs in Maine. (Maine does not have ring size restrictions, but both Massachusetts and New Hampshire have regulations that are the same or are more restrictive than Federal regulations.) Maine-permitted boats typically fish with 3-inch (76-mm) rings or smaller. Because the Gulf of Maine sea scallop resource normally consists of beds of spatfall that belong to the same year class and thus all have almost the same shell size, Maine-permitted boats would leave few scallops for federally permitted vessels with 3¼-inch (83-mm) rings or larger. Under this gear exemption program, which allows Federal permit holders to use smaller rings in state waters, Federal permit holders can compete on an equal footing with Maine state-waters-only vessel operators whose dredges have rings that are smaller than allowed under Federal regulations. Although this particular inconsistency does not exist in Massachusetts and New Hampshire, there are other restrictions in those states relating to gear that could create a competitive disadvantage between state and Federal permit holders.

The exemption program also allows Federal permit holders to avoid the cost of changing the rings on existing gear if they intend to use the gear only in state waters.

The impacts of the adjustment fall within the scope of the impacts analyzed in Amendment 4 to the FMP and the FSEIS. The rationale and analyses of expected biological effects, economic impacts, impacts on employment are discussed further in the framework adjustment document (see ADDRESSES).

Comments on Draft Framework No. 2 and Responses

NMFS is amending the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 650, subpart C. The New England Fishery Management Council (Council) followed the framework procedure when making this adjustment by developing and analyzing the actions over three Council meetings, on May 11, June 30, and September 21, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and the opportunity to comment on them prior to and at the Council meetings. Upon review of the analysis and public comment (see below), the Council recommended to the Director, Northeast Region, NMFS (Regional Director), that the measures contained in this framework adjustment be published as a final rule. The Regional Director has agreed with this determination.

Comment: One commenter expressed disbelief that fishing in Maine with 3-inch (76-mm) rings and a dredge as small as 4¼ ft (1.4 m) would be a violation.

Response: Current regulations would require Federal permit holders to change the rings on their dredges to 3¼ inches (83 mm) during the 1994–5 season, and again to 3½ inches (89 mm) in 1996, even if they were fishing strictly in state waters. The gear exemption will allow fishermen to continue to use rings smaller than 3¼ inches (83 mm) along with the dredge sizes required by Maine regulations.

Comment: There were two comments dealing with keeping track of vessels and where they fish. One commenter believes that the vessel tracking system (VTS) must be required to accomplish this. The U.S. Coast Guard commented that it will be difficult to determine who is fishing inside and outside of state waters.

Response: The VTS is considered a potential aid to enforcement of this provision but is not essential to its enforcement. When the VTS requirement is implemented, all limited access vessels required to have a VTS under a Federal permit (full-time and part-time vessels) must use them while fishing in the state waters exemption program. Limited access vessels in the occasional category will continue to be required to call in, but general permit holders will not be required to call in while in the state waters exemption program. General permit holders will be required to report landings and other data.

The primary Federal enforcement concern regarding the Gulf of Maine scallop resource is that vessels with state permits only, or with exemptions from Federal requirements, might fish in the Exclusive Economic Zone (EEZ) with gear not meeting Federal requirements. This problem exists whether or not a gear exemption program for Federal permit holders is implemented. Also, Federal enforcement personnel must still monitor scallop gear used by Federal limited access permit holders. Lists of vessels participating in the exemption program will be given periodically to enforcement agents to minimize problems. Therefore, exempting these vessels should not create any additional enforcement burden.

Comment: The Maine Scallopers Association supported the exemption from the ring size requirements.

Response: The gear exemption program responds to this concern by allowing vessels to fish in state waters with gear that conforms to the requirements of state management programs, provided that the exemption does not jeopardize the achievement of the fishing mortality/effort reduction objectives of the FMP.

Comment: The Maine Scallopers Association was concerned about the cost of VTS and thought that it should not be required while vessels are fishing in state waters.

Response: Vessels will not be required to purchase VTS because of the gear exemption program. Only vessels that will be required to use VTS in the Federal limited access scallop fishery must use it while participating in the state waters fishery.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The provision of advance notice as described in this rule and public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act. The AA also finds that under section 553(d)(1) of the Administrative Procedure Act, because immediate implementation of this rule relieves a restriction that would require vessels fishing in state waters to fish under the Federal gear requirements, there is no need to delay for 30 days the effectiveness of this regulation.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by

OMB under Control Number 0648–0202. The reporting burden is estimated at 2 minutes per response. This time includes reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection-of-information requirement, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: November 16, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

PART 650—ATLANTIC SEA SCALLOP FISHERY

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

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

§ 650.22 [Amended]

2. In § 650.22(a), the phrase "DAS exemption program" is removed and the phrase "state waters exemption program" is added in its place.

3. Section 650.27 is revised to read as follows:

§ 650.27 State waters exemption program.

(a) *DAS exemption.* Any owner of a vessel issued a limited access scallop permit under § 650.4(a) may request an exemption from the DAS Program, in accordance with notification requirements specified in paragraph (c) of this section, while fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under § 650.24(c) as long as the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption.* (1) *Limited access permits.* Any vessel issued a limited access scallop permit for which an exemption has been granted pursuant to paragraph (a) of this section will also be exempted from the gear restrictions specified under § 650.21(a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been listed as an eligible state as specified in paragraph (b)(3) of this section, as long as the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any owner of a vessel issued a general scallop permit shall be exempted from the gear restrictions specified in § 650.21(a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been listed as an eligible state as specified in paragraph (b)(3) of this section, as long as the vessel complies with paragraphs (d) through (f) of this section.

(3) *State eligibility for gear exemption.* (i) Vessels may be granted an exemption from gear restrictions as specified in paragraphs (b)(1) and (2) of this section if such vessels are fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director to have an Atlantic sea scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the FMP.

(ii) *State eligibility.* The following states have been determined to have an Atlantic sea scallop fishery and a scallop conservation program that do not jeopardize the fishing mortality/effort reduction objectives of the FMP:

(A) Maine.

(B) New Hampshire.

(C) Massachusetts.

(iii) *Changes in state eligibility.* The states that have been determined to be eligible, as specified in paragraph (b)(3)(ii) of this section, shall immediately notify the Regional Director of any changes in their scallop conservation program. The Regional Director will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the FMP or that the state no longer has a sea scallop fishery, the Regional Director shall publish a final rule in the **Federal Register** terminating that state's eligibility. The Regional Director may add any other state that is determined eligible, as described in paragraph (b)(3) of this section, by publication of a final rule in the **Federal Register**.

(c) *Notification requirements.* (1) *VTS notification.* Vessel owners requesting a state waters exemption via a VTS shall:

(i) Notify NMFS, via their VTS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify NMFS, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(2) *Telephone notification.* Vessel owners opting to request entry into the state waters exemption program by phone shall:

(i) Notify NMFS by calling 508–281–9335 with the following information at least 7 days prior to the date on which the exemption is requested:

(A) Owner and caller name and address;

(B) Vessel name and permit number; and

(C) Beginning and ending dates of the exemption period;

(ii) Remain in the exemption program a minimum of 7 days; and

(iii) If an exemption holder has been in the program a minimum of 7 days and wishes to withdraw earlier than the designated end of the exemption period, the exemption holder must notify the Regional Director of early withdrawal from the program. Notification of withdrawal is made by calling 508–281–9335. When providing notice, the exemption holder will specify that the request is for withdrawal from the program and provide the vessel name and permit number, and the name and phone number of the caller. The exemption holder may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(d) A vessel participating in the state waters exemption program may not fish in the EEZ during the participation period.

(e) Participation in the state waters exemption program expires when the owner's or vessel's name changes.

(f) Vessels participating in the state waters exemption program continue to be subject to all the other requirements of this part.

[FR Doc. 94–28681 Filed 11–16–94; 4:18 pm]

BILLING CODE 3510–22–W

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50 CFR Part 672

[Docket No. 931199–4042; I.D. 111094A]

Groundfish of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod in the Western Regulatory Area in the Gulf of Alaska (GOA) by vessels catching Pacific cod for processing by the inshore component. This action is necessary to fully utilize the allocation of the total allowable catch (TAC) of Pacific cod in

the Western Regulatory Area specified for vessels catching Pacific cod for processing by the inshore component.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 19, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B) the allocation of Pacific cod in the Western Regulatory Area of the GOA for vessels catching Pacific cod for processing by the inshore component was established by the 1994 specifications of groundfish harvest (59 FR 7647, February 16, 1994) as 14,967 metric tons (mt). The directed fishery for Pacific cod by the inshore component closed on March 8, 1994 (59 FR 11209, March 10, 1994).

The Director, Alaska Region, NMFS, has determined that, as of October 22, 1994, 500 mt of the TAC of Pacific cod for the inshore component in the Western Regulatory Area of the GOA remains unharvested. This amount is in excess of the amount necessary as incidental catch by vessels using pot or jig gear in other groundfish fisheries. Directed fishing for groundfish by vessels using hook-and-line or trawl gear is prohibited, because the allocations of Pacific halibut bycatch mortality for those gears have been reached. Therefore, NMFS is terminating the closure and is opening directed fishing for Pacific cod in the Western GOA by vessels catching Pacific cod for processing by the inshore component effective at 12 noon, A.l.t., November 19, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: November 15, 1994.

David S. Crestin,

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

[FR Doc. 94–28596 Filed 11–15–94; 5:01 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 223
Monday, November 21, 1994

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–21]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires initial and repetitive inspections of certain front compressor fan hubs and shotpeening of the forward and aft rim to web radius. This action would reduce the initial inspection interval for front compressor fan hubs installed in all positions of all applicable aircraft, establish a compliance end-date, and clarify the wording of the compliance requirements. This proposal is prompted by a report of a front compressor fan hub fracture installed in a Boeing 737 aircraft that resulted in the release of fan blades and portions of the hub outer rim. The actions specified by the proposed AD are intended to prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by January 20, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–21, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–21." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–21, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On July 15, 1993, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 93–14–14, Amendment 39–8638 (58 FR 39644, July 26, 1993), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, to require initial and repetitive inspections for cracks, and removal from service, if necessary, of certain front compressor fan hubs. Front compressor fan hubs installed on engines in the No. 2 position on Boeing 727 aircraft must be inspected according to a more aggressive schedule than other installations. In addition, that AD requires shotpeening of the forward and aft rim to web radius area of hubs that pass the inspections. That action was prompted by reports of two front compressor fan hub fractures on engines operating in the No. 2 position on Boeing 727 aircraft. That condition, if not corrected, could result in a fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

Since the issuance of that AD, the FAA has received a report of a front compressor fan hub fracture on a PW JT8D engine installed on a Boeing 737 aircraft. The examination of the failed hardware revealed the failure mechanism to be identical to that described in AD 93–14–14. The analysis conducted for that AD concluded that the vibratory stress environment that caused fan hub fractures was the most severe for engines installed in the No. 2 position on Boeing 727 aircraft. Therefore, the FAA addressed this population in a more aggressive manner than engines installed in other aircraft, or in the No. 1 or No. 3 position on Boeing 727 aircraft. The FAA determined that a similar, but less severe stress environment existed in engines installed in other aircraft or positions other than the No. 2 position in the Boeing 727 aircraft, and inspection and shotpeening requirements were specified for these engines in AD 93–14–14. Since the failure of the fan hub installed in the Boeing 737 aircraft, the FAA has reassessed the risk analysis for all installations and determined that the predicted risk level should be reduced.

Therefore, the FAA proposes to supersede AD 93–14–14 with a reduced initial fan hub inspection requirement for engines installed in all positions of all applicable aircraft, by requiring engines removed from the Boeing 727 aircraft No. 2 position to adhere to the Boeing 727 aircraft No. 2 position inspection requirements, and by establishing a compliance end-date.

The FAA has received comments from operators that the wording of paragraph (b)(4) of AD 93–14–14 is confusing. The FAA has revised the wording to emphasize that the repetitive inspection is required at the next opportunity when the front compressor fan hub is accessible at the detail level in the shop only after accumulating 2,500 additional cycles in service (CIS) since the last inspection.

In addition, the FAA has revised the wording in paragraph (d) that defines a shop visit as an engine removal for engine maintenance that cannot be performed while installed in the aircraft.

Since publication of AD 93–14–14, PW has issued Alert Service Bulletin (ASB) No. 6104, Revision 3, dated June 16, 1994, that describes the reduced initial inspection intervals for the applicable engine installations.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–14–14 to reduce the initial inspection interval for front compressor fan hubs installed in all positions of all applicable aircraft, revise the compliance requirements for repositioned engines, establish a compliance end-date, and clarify the wording of the compliance requirements.

The FAA estimates that 1475 engines installed on aircraft of U.S. registry and 690 domestic uninstalled engines would be affected by this proposed AD, that it would take approximately 12 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,428,900.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8638 (58 FR 39644, July 26, 1993) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 94–ANE–21. Supersedes AD 93–14–14, Amendment 39–8638.

Applicability: Pratt & Whitney (PW) Model JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines containing front compressor fan hub Part Number (P/N) 817401 with the following serial numbers: J78892 through J80538, K32019 through K34018, L32197 through L34133, or M05722 through M07296; and all serial numbers of fan hubs P/N 594301, 640601, 743301, 749801, 750101, 791801, and 806001. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For front compressor fan hubs installed in engines in the No. 2 position on Boeing 727 aircraft on or after the effective date of this airworthiness directive (AD), inspect and shotpeen the front compressor fan hub in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW Alert Service Bulletin (ASB) No. 6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub as follows:

Total Part Cycles (TPC) on the effective date of this AD	Initial inspection interval
Over 18,001 TPC	Inspect at the next shop visit, or within 300 cycles in service (CIS) after the effective date of this AD, whichever occurs first.
16,501 to 18,000 TPC	Inspect at the next shop visit, or within 500 CIS after the effective date of this AD, whichever occurs first.
15,001 to 16,500 TPC	Inspect at the next shop visit, or within 750 CIS after the effective date of this AD, whichever occurs first.
13,501 to 15,000 TPC	Inspect at the next shop visit, or within 1,000 CIS after the effective date of this AD, whichever occurs first.
10,501 to 13,500 TPC	Inspect at the next shop visit, or within 1,500 CIS after the effective date of this AD, whichever occurs first.
Less than 10,501 TPC	Inspect at the next shop visit but not to exceed 12,000 TPC, or by the compliance end-date, whichever occurs first.

(2) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft after the effective date of this AD must adhere to the initial inspection interval specified in paragraph (a)(1) of this AD. Inspect and shotpeen front compressor fan hubs on these repositioned engines in accordance with paragraph (a)(1) of this AD.

(3) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(4) Shotpeen the front compressor fan hubs that pass the inspections required by paragraph (a)(1) of this AD, in accordance with Appendix B of PW ASB No. 6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft, in

accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764), as applicable, of PW ASB No. 6104, Revision 3, dated June 16, 1994, as follows:

(i) For hubs that were last inspected and shotpeened with greater than 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, but prior to the accumulation of 8,000 CIS since last inspection.

(ii) For hubs that were last inspected and shotpeened with less than or equal to 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, or prior to accumulating 12,000 TPC, whichever occurs later, but not to exceed 8,000 CIS since last inspection.

(6) Engines removed from the No. 2 position on Boeing 727 aircraft and reinstalled in aircraft or positions other than the No. 2 position on Boeing 727 aircraft prior to reaching the repetitive inspection interval specified in paragraph (a)(5) of this AD must be inspected as follows:

(i) For the next inspection, inspect in accordance with paragraph (a)(5) of this AD; and

(ii) Thereafter, inspect and shotpeen in accordance with paragraph (b)(4) of this AD.

(b) For front compressor fan hubs installed in engines that are installed in aircraft or positions other than the No. 2 position on Boeing 727 aircraft on the effective date of this AD, inspect and shotpeen the front compressor fan hubs in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. 6104, Revision 3, dated June 16, 1994, as follows:

(1) Initially inspect the front compressor fan hub at the next shop visit after the effective date of this AD, but not later than the compliance end-date.

(2) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(3) Shotpeen the front compressor fan hubs that pass the inspection requirements specified in paragraph (b)(1) of this AD, in accordance with Appendix B of PW ASB No. 6104, Revision 3, dated June 16, 1994, prior to returning the hub to service.

(4) Thereafter, upon accumulating 2,500 addition CIS since the last inspection, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are not reinstalled in the No. 2 position on Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. 6104, Revision 3, dated June 16, 1994, when the front compressor fan hub is accessible at the detail level in the shop.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft after the effective date of this AD in accordance with paragraph (a)(5) of this AD.

(c) Inspect and shotpeen front compressor fan hubs that were inspected and shotpeened in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP–764) of PW ASB No. 6104, dated December 21, 1992, PW ASB No. 6104, Revision 1, dated May 21, 1993, or PW ASB No. 6104, Revision 2, dated June 18, 1993, prior to the effective date of this AD in accordance with paragraphs (a)(5) or (b)(4) of this AD, as applicable.

(d) For the purpose of this AD, the compliance end-date referenced in paragraphs (a)(1) and (b)(1) of this AD is defined as December 31, 1999, or 6,000 TPC after the effective date of this AD, whichever occurs later.

(e) For the purpose of this AD, a shop visit is defined as an engine removal for engine maintenance that cannot be performed while installed in the aircraft, and that entails separation of pairs of mating (lettered) engine flanges or the removal of a compressor disk, hub, or spool, or removal of a turbine disk.

(f) For the purpose of this AD, accessibility of a front compressor fan hub at the detail level in the shop is defined as engine maintenance that entails separation of the front compressor fan hub from the front compressor and removal of the fan blades.

(g) Report the front compressor fan hub part number, total time, and total cycles in service for each hub that passes the inspections defined in this AD, within 60 days after the inspection, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; fax (617) 238–7199. For any hub that is found cracked, submit the information requested in paragraph B of Part 4, of the Accomplishment Instructions of PW ASB No. 6104, Revision 3, dated June 16, 1994, within 60 days after the inspection to the Manager, Engine Certification Office, at the address identified above. The reporting requirements of this AD terminate one year after the effective date of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on November 14, 1994.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–28634 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–30–94]

RIN 1545–AS71

Definition of Club; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a cancellation of a public hearing on proposed regulations relating to the definition of a "club organized for business, pleasure, recreation, or other social purpose" for purposes of the disallowance of a deduction for club dues.

DATES: The public hearing originally scheduled for Tuesday, November 29, 1994, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 274(a)(3) of the Internal Revenue Code of 1986. A notice of public hearing appearing in the **Federal Register** for Friday, August 12, 1994 (59 FR 41414), announced that the public hearing on proposed regulations under section 274(a)(3) of the Internal Revenue Code would be held on Tuesday, November 29, 1994, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington D.C.

The public hearing scheduled for Tuesday, November 29, 1994, has been cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–28609 Filed 11–18–94; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5110–2]

RIN 2060–AE–72

Operating Permits Program Rule Revisions

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Extension of comment period for proposal to revise the operating permits program regulations.

SUMMARY: On August 29, 1994, EPA proposed in the **Federal Register** (59 FR 44460) revisions to the operating permits regulations in part 70 of chapter I of title 40 of the Code of Federal Regulations. The comment period provided in that notice was 90 days, closing on November 28, 1994. Today's action extends that comment period an additional 45 days until January 12, 1995.

DATES: Comments on the changes to the part 70 regulations proposed on August 29, 1994 at 59 FR 44460 must be received by January 12, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (LE–131), Attn: Docket No. A–93–50, room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Trutna (telephone 919/541–5345), mail drop 12, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Part 70 contains regulations requiring States to develop, and submit to EPA for approval, programs for issuing operating permits to major, and certain other, stationary sources of air pollution. The minimum elements of operating permits programs are contained in part 70 which was promulgated on July 21, 1992 (57 FR 32250).

Subsequent to promulgation of part 70, nearly 20 entities, including State and local governments, environmental groups, and industry associations, petitioned for judicial review of the part 70 regulations. One of the key aspects of the litigation and of an operating permits program is the system for revising permits to incorporate changes at permitted sources.

Several requests for an extension of the comment period on the proposal notice have been received to allow time for preparation of comments primarily on how to fashion a more workable permit revision system. Because of the complexity of the proposed revisions, potential commenters assert that the 90-comment period provided is not long enough to prepare comprehensive comments on the permit revision system as well as all the other proposed revisions. An additional 45 days is therefore being provided for development and submittal of comments.

Dated: November 15, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–28711 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPPTS–50618A; FRL–4922–3]

RIN 2070–AC37

Significant New Uses of Lead; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: EPA is extending the comment period for an advance notice of proposed rulemaking (ANPR) for significant new uses of lead issued under section 5(a)(2) of the Toxic Substances Control Act (TSCA). Significant new use rules for lead would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of lead and lead compounds for uses identified by the Agency as significant new uses. The ANPR was published in the **Federal Register** of September 28, 1994.

DATES: Written and electronic comments submitted in response to the ANPR must be received on or before January 27, 1995.

ADDRESSES: All data and comments should be submitted in triplicate to: TSCA Document Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All written data and comments should be identified by the docket number OPPTS–50618A.

Comments and data may also be submitted electronically by any of three different mechanisms: by sending electronic mail (e-mail) to: Docket-OPPTS@unixmail.rtpnc.epa.gov; by sending a "Subscribe" message to listserver@epamail.epa.gov and once subscribed, send your comments to RIN-2070–AC37; or through the EPA Electronic Bulletin Board by dialing 202–488–3671, enter selection "DMAIL," user name "BB—USER" or 919–541–4642, enter selection "MAIL," user name "BB—USER." Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form should be identified by the docket number OPPTS–50618A. Electronic comments on the ANPR, but not the complete record, may be viewed or new comments filed online at many Federal Depository Libraries. To obtain further information on submitting comments on the ANPR electronically through the EPA Bulletin Board or the Internet ListServe, please contact John A. Richards (Telephone: 202–260–2253; FAX: 202–260–3884; Internet: richards.john@epamail.epa.gov).

Data and comments containing information claimed as confidential business information (CBI) should be submitted in triplicate to: TSCA Document Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–105, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–50618A. A sanitized copy of the comments that can be included in the public docket must be provided in triplicate to the TSCA Documents Receipt Office. No CBI should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551. For technical information contact: Jonathan Jacobson, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–3779, Internet: jacobson.jonathan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1994 (59 FR 49484), EPA published an ANPR for significant new uses of lead issued under section 5(a)(2) of TSCA. Significant new use rules for lead would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of lead and lead compounds for uses identified by the Agency as significant new uses.

EPA issued this ANPR to: (1) Communicate its intention to regulate significant new uses of elemental lead and lead compounds; (2) identify components of its proposed regulatory approach; (3) request comment on issues related to this approach; and (4) request comment and information on existing uses of lead that would help support EPA's selection of proposed criteria for defining significant new uses of lead. Written comments on the ANPR were to be received on or before November 28, 1994.

EPA has received several requests from trade associations seeking a 60–day extension of the public comment period because of additional time needed to provide EPA with information requested in the ANPR. EPA believes that providing an additional 60–day period to prepare written comments is reasonable. The Agency, therefore, is extending the comment period 60 days in order to give all interested persons the opportunity to comment fully. Written and electronic comments submitted in response to the ANPR must be received on or before January 27, 1995.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 15, 1994.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–28704 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 39

RIN 1090–AA44

Revised Statute 2477 Rights-of-Way

AGENCIES: Bureau of Land Management, National Park Service, Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: A proposed rule to implement Revised Statue 2477 addressing rights-of-way across lands now administered by the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service was published in the **Federal Register** on August 1, 1994 (59 FR 39216), with a 60-day comment period expiring September 30, 1994. The comment period was extended until November 15, 1994, in response to public request by a notice published in the **Federal Register** on September 13, 1994 (59 FR 46952). In response to additional public requests, the comment period is being reopened for an additional 60 days.

DATES: The period for the submission of comments is hereby extended until January 20, 1995. Comments postmarked after this date will not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESSES: Comments should be sent to the Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management: Ron Montagna, (202) 452–7782. National Park Service: Dennis Burnett, (202) 208–7675. Fish and Wildlife Service: Duncan Brown, (703) 358–1744.

Dated: November 16, 1994.

Nancy K. Hayes,

Acting Assistant Secretary of the Interior.

[FR Doc. 94–28694 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–57; Notice 2]

RIN 2127–AF00

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice responds to a notice of request for comments that NHTSA published in 1993 implementing the grant of a petition by Robert Bosch GmbH. It proposes an amendment to the Federal motor vehicle standard on lighting that would permit replaceable lenses on integral beam and replaceable bulb headlamps that incorporate on-board headlamp aimers, provided that such headlamps meet more rigorous environmental tests. The benefit of headlamps with replaceable lenses is that the lens or reflector could be replaced in the event of breakage of either without the present necessity to replace both components if only one is damaged.

DATES: Comments are due February 21, 1995. The amendments would be effective 30 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION: On August 12, 1993, NHTSA published a Notice of Request for Comments in implementation of a grant of a petition for rulemaking submitted by Robert Bosch GmbH (58 FR 42924). The notice sought views relevant to a decision on whether to proceed with rulemaking to amend Standard No. 108 to allow the lens to be replaceable on a replaceable bulb headlamp equipped with an on-vehicle aiming device. In addition to comments on the five benefits ascribed by Bosch to replaceable lens headlamps, NHTSA asked for comments on fifteen relevant issues. The reader is referred to the notice for further information.

Comments were submitted by 21 interested persons: Advocates for Highway Safety (Advocates), American Automobile Manufacturers Association (AAMA), American Honda, Fiat Auto R&D USA, Ford Motor Company, General Electric Worldwide Automotive Lighting (GE), General Motors Corp. (GM), Hella KG Hueck & Co., KC Hilites, Koito Manufacturing Co. Inc., Oscar Lidstrom, Jr., Maine Bureau of Highway Safety, Massachusetts Registry of Motor Vehicles, Mercedes-Benz of North America, Osram Sylvania, Inc., PACCAR, Inc., Stanley Electric Co. Ltd., Virginia State Police, Volkswagen of North America (on behalf of itself and Audi), Volvo of North America, and J. L. Witt. The concept of replaceable lenses for certain headlamps was opposed by three commenters: Advocates, GE, and KC Hilites. Six others expressed reservations: AAMA, GM, Maine, Massachusetts, Stanley, and Koito. The remaining 12 commenters either actively supported the concept or submitted comments that did not indicate opposition to it. Where appropriate, these comments are mentioned in the discussion of issues that follows.

NHTSA's evaluation of the comments that were submitted has synthesized

agency concerns into three issues: the photometric performance of headlamps after relensing, the durability performance of headlamps before and after relensing, and the economic benefits to the consumer of replaceable lens headlamps.

Photometric Performance of Headlamps After Relensing

The first issue of concern is whether a headlamp with a replaceable lens will provide photometric performance equivalent to a headlamp using the original lens. NHTSA had previously denied two petitions (from GM and BMW of North America) for replaceable lens headlamps, principally from concern for potential aiming problems and corroded reflectors.

The potential for misaim has two bases. The first is relevant to mechanically aimable headlamps, which have three alignment pads on the lens to orient alignment tools. Some designs use pads ground to the individual characteristics of each reflector/lens assembly. This creates lamp-to-lamp differences in lenses, irrelevant when the lens is permanently attached to the reflector assembly, but of possible concern when lenses may be replaced. Even in designs without custom ground pads, continuation of proper aim is dependent upon the repeatability of the attachment of the lens to the reflector. Small differences in fit or gasket crush could modify the interaction between the reflector and the lens and thereby reorient the aiming pads.

The aiming pad issue does not arise under the Bosch petition because it includes only headlamps with on-board aiming devices, which aim the reflector without reference to the lens. Bosch provided data from photometric tests demonstrating that, absent the aiming pad considerations, headlamp photometry was insensitive to lens replacement. The illumination at required test points produced by the test reflector and bulb was nearly identical in each test, using five replaceable lenses with different production dates. The differences between lenses of the same part number and any variations in lens alignment due to repeated replacement had no apparent effect on the photometric performance of the combination of new components.

Advocates had criticized the minimum "above-horizontal" illumination requirements established by the agency for 1994 and newer model vehicle headlamps as providing poorer performance than that of sealed beam headlamps. It opposed lens replacement on the basis of a potential for a further reduction in "above-horizontal" illumination which it believed would result from deviations in lens alignment during replacement. The Bosch data should allay Advocates' concern, as should a comment by Osram Sylvania that headlamp photometry is not sensitive to the slight misalignments possible during lens replacement. Although Osram Sylvania had other criticisms of replaceable lenses, it reported that common design practices for replaceable bulb headlamps limit the sensitivity of photometric performance to lens misalignment and that replacement lenses need not be identical to original lenses to maintain equivalent photometric performance.

In summary, comments and data submitted to the docket are persuasive that photometric performance of new lamps is not sensitive to typical production variations of replacement lenses. For the reasons expressed above, it appears that headlamps with on-vehicle aiming and replaceable lenses are equivalent in photometric performance to headlamps with on-vehicle aiming and bonded lenses.

Durability Performance of Headlamps Before and After Relensing

For new headlamps, Standard No. 108's tests for dust penetration, corrosion, humidity, vibration, and water sealing should assure that headlamps with replaceable lenses will have a lens-to-reflector sealing that is equivalent to the protection provided by headlamps with bonded lens/reflector assemblies. However, if the reflector of a headlamp is affected by exposure during the period when the vehicle is operated with a broken lens or by improper cleaning attempts during relensing, there is a strong possibility that an owner may continue to use the unit after relensing without being aware of its degraded performance. Less than half of all states have periodic vehicle inspection, and those that do differ in their rigor. Thus, inspection programs cannot be expected to detect the decreased photometric performance of headlamps with degraded reflectors. The second potential problem is that the lens-seal integrity could be lost during relensing, and that an otherwise good reflector would be subject to moisture and dust for the remaining life of the vehicle.

Reflector degradation was not a concern before 1983 when replaceable bulb headlamps were allowed. In a sealed beam lamp, a crack in the lens large enough to admit moisture would cause the filament to fail, necessitating the replacement of the entire headlamp. However, replaceable bulb headlamps can continue to operate despite a broken lens, and the possibility of degraded reflectors was considered by the agency during the course of rulemaking that allowed them. The requirement for a bonded lens was motivated in part by NHTSA's desire to avoid creating a potential safety problem that had been impossible when Standard No. 108 allowed only sealed beam headlamps. It is a conservative requirement that results in the replacement of reflectors when the condition of the lens indicates possible long term exposure of the reflector to water and dirt. Even a small hole can cause the headlamp to fill with water due to condensation during the heating and cooling cycle of lamp use.

A potential safety disadvantage of the bonded lens requirement is that the cost of replacing a headlamp rather than a lens may tend to delay or to discourage repair altogether. However, the desire to maintain the aesthetic quality of a newer vehicle and the obvious performance problem of a cracked lamp containing moisture should motivate many owners to make a replacement, even if costly. A more powerful motivation is provided by the vehicle inspection programs maintained by less than half of the states. Typically, the states inspect for aim and for damaged lenses, and in some instances inspect replaceable bulbs for maximum power to prevent the use of high powered "off road" aftermarket bulbs. But even strict states, such as Virginia, do not inspect for the low light output that would identify headlamps with degraded reflectors. Many commenters who favored the concept of replaceable lenses voiced concerns about the potential loss of performance of relensed units. AAMA suggested replaceable lenses for integral beam headlamps as well as for those with replaceable bulbs, but it commented that any rulemaking allowing replaceable lenses must assure that reflectors are designed to be more resistant to abrasion and solvents, with special durability and environmental qualification requirements added. American Honda was concerned about technical problems which may exist in ensuring that photometric performance is equal to the level of performance before the lens was damaged, and ensuring adequate sealing against dust and moisture after the lens alone is replaced. GE commented that the average consumer or automotive mechanic does not have the background and understanding to make the decisions necessary to determine if a headlamp is safely repairable. Osram Sylvania agreed with the Bosch petition

that reflector surfaces can be cleaned during lens replacement, but it cautioned that the reflector can be damaged by improper cleaning and handling. It also advised that the touch of human hands can deposit skin oil on the reflector with the possible consequences of reflector fogging, reduced output and increased glare. It further commented that the lens replacement process could break the sealing coat, protecting the thin aluminum coating on the reflector from moisture, which could lead to a very rapid loss of reflecting area and photometric performance.

Volkswagen's comments also responded to questions about performance loss of relensed lamps. It suggested that only specially trained dealer service personnel should install lenses, presumably refusing to relens degraded lamps, and that state inspections should monitor the condition of reflectors. These steps may be feasible in Europe where reflector corrosion, at least in older designs, is a problem requiring universal inspection and where the manufacturers control the replacement lens supply. But they are not effective in the United States. Less than half the States have inspections, and those that do are not required to cover the condition of the reflector because it was never a concern during the long era in which sealed beams were the only type of headlamps allowed. Also, the U.S. aftermarket would not be limited to OEM lenses (conferring on dealers the power to refuse to repair degraded lamps) because non-OEM manufacturers would be free to manufacture components and sell them directly to vehicle owners.

Volkswagen and American Honda commented that replaceable lens headlamps could be designed to require removal of the headlamp from the vehicle in order to replace the lens. This would have the effect, desirable to the commenters, of causing owners to rely on the vehicle manufacturer's dealers for lens replacement. However, causing lens replacement to be more expensive and less convenient diminishes the prospect of greater headlamp maintenance in states without inspection. Further, owners compelled by state inspection to replace parts often insist on making their own repairs to minimize their burden. Making the task unnecessarily complex only increases the chances that the owner will make a poor repair. In the case of HID integral beam headlamps, easy removal of the lens without disturbing the other components may reduce high voltage hazards during owner repairs. The better solution, suggested by the AAMA and others, is to adopt durability and environmental requirements for replaceable lens headlamps to increase the likelihood that relensed headlamps will perform satisfactorily regardless of who services them. This solution minimizes the potential loss of performance from degraded reflectors and maximizes the potential for inexpensive voluntary lens repairs in states without inspections.

The most detailed comments to the question of reflector durability were those of Ford Motor Company. They contain a comprehensive statement of the reflector durability problem and some general guidance concerning appropriate test procedures. Ford commented:

> Replaceable bulb headlamps currently incorporate reflective surfaces not specifically designed to withstand direct environmental exposure or abrasion. If the condition prompting replacement of a lens has resulted in contamination or discoloration of the reflector surface (e.g., as might occur due to a lens crack or loss of integrity of the lens/reflector seal), a degradation in photometric performance would be expected, as compared to a new replacement headlamp. Attempts to clean a contaminated reflector, as by wiping, could result in abrasion to the metallized surface, possibly resulting in degraded photometric performance and/or increased glare. Ford therefore recommends that rulemaking on replaceable lens headlamps consider the need for the reflective surfaces of replaceable lens headlamps to withstand appropriate environmental exposure and cleaning operations.

Ford's recommendations were:

> Ford recommends that headlamps with replaceable lenses, in addition to present requirements applicable to replaceable bulb headlamps, be subjected to salt-fog, moisture and dust exposure without the lens in place. Additionally, the reflector surface should be capable of withstanding resistance to chemicals that are likely to be used by consumers or repair facilities to clean contaminated reflector surfaces. Subsequent to appropriate environmental and chemical exposure, the reflector should be cleaned according to a prescribed procedure. When fitted with a lens following exposure and cleaning, the headlamp should be capable of meeting the same photometric requirements applicable to replaceable bulb headlamps with bonded lenses. Aftermarket lens manufacturers should be required to certify that any headlamp for which the lens is intended is capable of meeting photometric requirements when fitted with a lens of that design. Additionally, aftermarket replacement lenses should be accompanied with complete instructions for properly removing the old lens, cleaning the interior of the headlamp body, cleaning and preparing the mating surface on the headlamp body and installing the new lens on the headlamp body.

The durability and environmental requirements for the present replaceable bulb headlamps and the deliberations that led to them may be useful in considering reasonable requirements for the reflectors of replaceable lens headlamps. When the agency amended Standard No. 108 to permit replaceable bulb headlamps, it was aware that German vehicle inspection data showed significant rejections due to dull, corroded and damaged headlamp reflectors. Thus, NHTSA promulgated an appropriate test of corrosion resistance for replaceable bulb headlamps for use in the United States. The lamp assembly must be exposed for ten days in a salt spray chamber, with the additional requirement than the bulb be removed and the spray deactivated during the last hour of all but two test days. The test put a premium on the ability of the lens to protect the reflector from the salt spray. It also required a degree of direct corrosion resistance exceeding the performance of some European headlamps by having the lamps exposed to several hours of salty air in the chamber without direct spray. In its original form, the rule required that the headlamp pass the photometric test at the completion of the corrosion test. The post-exposure photometric test was later eliminated because of the possibility of salt deposits that could not be removed easily from a headlamp with a bonded lens.

A corrosion test of increased rigor for reflectors of replaceable lens headlamps would remove much of the safety concern about relensing lamps that have become contaminated with dust and moisture. The agency is proposing a specific environmental test for reflectors of replaceable lens headlamps which it believes is consistent with Ford's recommendations while imposing minimum testing burdens. NHTSA is proposing an additional salt spray test with the following features for new replaceable lens headlamps: (a) A 24 hour exposure to salt spray with the lens removed, (b) a 48 hour drying period, (c) cleaning of the reflector according to instructions to be furnished with replacement lenses and included in the owner's manual, (d) a non-magnified examination for corrosion, and (e) a photometric test of the headlamp as reassembled with a new lens. The proposed exposed reflector test mimics the existing test of headlamps with lenses but with a much reduced duration since reflector exposure in service would not be continuous. However, it makes use of the expected salt deposit formation to

test the durability of the reflector coating to cleaning. Finally, it would require the manufacturer of a headlamp with a replaceable lens to demonstrate photometric compliance of the reassembled cleansed lamp.

Ford recommended three distinct tests of headlamp reflector exposure to salt-fog, moisture, and dust, while the agency proposes a single test. Comment from parties familiar with reflector construction and exposure testing is sought. The following questions are of particular interest:

(1) A cracked lens frequently causes a headlamp to partially fill with water. Is the moisture and exposure time involved in an ASTM B 117–73 salt spray test sufficient to test moisture resistance of reflectors? If not, what test would be sufficient?

(2) The present dust test for replaceable bulb headlamps uses Portland cement as dust, and the agency presumes that Ford's comment refers to the same kind of dust test. Cleaning the reflector after Portland cement dust exposure may be equivalent to a rigorous abrasion test. The agency believes that the proposed salt-spay test will coat the headlamp reflector with salt deposits and that the subsequent cleaning will provide an adequate abrasion test. However, does a 24-hour salt spray test deposit enough salt to act as a de facto abrasion test? Should a particular method of salt removal be required or should the manufacturers' cleaning instructions dictate the test procedure, as proposed? Is a Portland cement dust test as well as a salt spray test of reflectors needed, and if so, why? Should a direct abrasion test be used rather than the indirect abrasion of cleaning, and if so, what procedure would be appropriate?

(3) Is the proposed 24-hour salt spray test followed by 48 hours drying time sufficient to test the headlamp reflectors and the metal light shields sometimes used? What corrosion criteria are appropriate for light shields? Can rusty water dripping from metal light shields eventually cause otherwise durable headlamp reflectors to fail because of stains?

(4) The present standard for replaceable bulb headlamps exposes lamp assemblies with the bulb removed (but the lens attached) for eight hours to humid salty air in a salt spray chamber with the salt spray turned off. Is this present test (followed by a photometric test and whatever cleaning is necessary) sufficient to qualify headlamp reflectors for use with replaceable lenses without the proposed direct salt spray test or the moisture, dust and salt spray tests recommended by Ford?

The existing Standard No. 108 also includes a chemical resistance test of the exterior of the lamp to fuel, tar remover, power steering fluid and antifreeze. NHTSA has tentatively concluded that the test should be extended to headlamp reflectors using chemicals suggested by the manufacturer in the cleaning instructions or with a realistic probability of use by vehicle owners despite the manufacturer's instructions. Chemicals in the latter category would include tar remover, lacquer thinner and mineral spirits. The manufacturer's instructions may concentrate on water soluble contaminants because of the salt spray test. The inclusion of the other chemicals gives the owner a means to remove organic contaminants without resorting to abrasion. Since mineral spirits is a major constituent of tar remover, a separate test for mineral spirits appears unnecessary.

The plastic lenses on replaceable bulb headlamps manufactured for use in the United States are given a hard protective coating that would be expected to exceed the reflector coating requirements established by the proposed tests. NHTSA expects that similar coating methods could be used to create robust reflectors for replaceable lens headlamps. It would be reasonable to expect successful lens replacement by vehicle owners, especially if the lens attachments were designed to be accessible without disturbing the headlamp aim. The requirement for headlamp reflector durability also reduces concern about untrained persons installing the lens seal. Should an owner install the seal incorrectly, causing moisture to collect inside the lamp, the reflector will not degrade quickly. The visible moisture would serve as a telltale, and an owner motivated to replace the lens initially would be motivated to disassemble, clean and reinstall the lens until the desired repair was successful. If manufacturers choose to design headlamps for ease and economy of lens replacement by owners, the prospect of better lamp maintenance in non-inspection States is realistic.

Economic Benefits to the Consumer of Replaceable Lenses

The cost to replace two replaceable bulb headlamps can equal 10 percent of the value of an entire car after it is 5 to 8 years old. Consumers used to the cost of sealed beam headlamps are critical of state vehicle inspection programs when they force the replacement of headlamps at costs which far exceed those of sealed beams. When Standard No. 108 was amended to permit replaceable bulb headlamps, the economic consequences of lens/reflector assembly replacement were not considered to be relevant to safety, and the ability to replace the light source gave some promise of consumer benefit. Ironically, the economic burden to consumers now fuels a safety debate about whether the reluctance of owners to replace expensive cracked lamps or the possibility of degraded performance of relensed lamps is the greater threat to safety. The styling benefits of replaceable bulb headlamps over sealed beams have resulted in large potential cost penalties and an unquantifiable degree of performance loss when the headlamps are damaged.

Volkswagen commented that the cost to replace a headlamp is 7 to 8 times that of the lens alone. It cited examples of lamps costing $215 to $270 and estimated the cost of replaceable lenses in the $30 to $40 range. Mercedes estimated the cost of replaceable lenses at $126 to $150 and complete headlamps at $250 to $640 with on-board aiming. While the cost of headlamps with the fasteners, gaskets, and indexing features required for replaceable lens designs would be higher than the cost of headlamps with simple bonded lenses, reductions in repair costs of 50% to 85% appear to be likely.

The agency anticipates that replaceable lens designs would be attractive only for headlamps using glass lenses. These are predominantly used on imported vehicles. Replaceable bulb headlamps which have coated polycarbonate plastic lenses are extremely resistant to cracking and chipping. AAMA commented that the impact resistance of plastic lenses significantly reduces any servicing need to provide replaceable lenses. Glass lenses are less expensive than coated plastic lenses, and they have greater resistance to high operating temperatures and abrasion by headlamp wipers.

However, the additional cost of a replaceable lens design would probably negate the economic advantage a manufacturer might achieve by changing to a less expensive replaceable glass lens when it had been using bonded plastic lenses. It is likely that the market for replaceable bulb headlamps with replaceable lenses would be confined to a small segment of the import market in which headlamp wipers or high operating temperatures dictate the choice of glass lenses.

Bosch's petition covered only replaceable bulb headlamps. However, AAMA commented that a greater economic benefit of replaceable lenses

could be found in integral beam headlamps. High Intensity Discharge (HID) lamps are being developed for use as integral beam headlamps, and their operating temperatures are expected to dictate the use of glass lenses. An integral beam headlamp is required to be manufactured with the lens, bulb, reflector, cable and high voltage source configured as an indivisible whole. HID headlamps are much more costly than replaceable bulb headlamps, and the prospect of replacing the whole lamp (at perhaps $1000) in order to repair a cracked lens may be a significant impediment to introduction of the technology. Since the industry-imposed economic burden on the consumer is the agency's primary reason for considering replaceable lens headlamps, it is appropriate to include integral beam headlamps in the proposal.

Proposed Amendments

NHTSA is implementing its conclusions by proposing appropriate amendments to Standard No. 108. As noted above, the proposed amendments cover integral beam headlamps as well as those with replaceable bulbs. The proposal requires redefinitions of "integral beam headlamp" and "replaceable bulb headlamp" to clarify that some types of these headlamps need not have a bonded lens reflector assembly, those with a vehicle headlamp aiming device (VHAD) conforming to Standard No. 108. Under the proposal, each replacement lens would also have to be accompanied by an appropriate replacement seal, and instructions to the user on how to remove and replace the lens, clean the reflector, and seal the lens to the lamp. Manufacturers of replacement lenses would mark them with a DOT symbol which will be the manufacturer's certification that installation of the lens on the headlamp for which it is intended will not create a noncompliance with Standard No. 108. A new section is proposed that would add the chemical and corrosion resistance tests discussed above.

The greatest impact of the proposal will be on future HID integral beam headlamps which may require heat resistant glass lenses rather than impact resistant plastic lenses. These headlamps will be very costly and their replacement will involve high voltage components. The development of durable reflectors to make them suitable for replaceable lens will be an important step in making HID lamps practical. Additionally, should future changes to the standard accommodate HID light sources in replaceable bulb headlamps, the ability to have replaceable lenses would enhance their economic viability as well.

The comments suggest that it is not critical to require replacement lenses to be identical to original lenses in order to maintain photometric performance in compliance with the standard. The only necessary requirement is that the replacement lens maintain compliance of an otherwise compliant headlamp in all respects including sealing. An additional practical requirement is that a replacement lens be supplied with a new seal and instructions for cleaning the reflector and installing the lens and seal.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

The effective date of the final rule would be [30 days after publication in the **Federal Register**]. Because the final rule establishes no additional burden on any party, it is hereby tentatively found for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance would be in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to afford a further optional means of compliance with the headlamp requirements of Standard No. 108. While a final rule could result in higher prices for buyers of glass-lensed headlamps of certain types, these initial costs could be offset by reduced repair costs during the life of the vehicle or the headlamp. These cost impacts are not deemed significant and preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The design and composition of headlamps which take advantage of this option may change from those presently in production but it is anticipated that the kind of materials used will be the same.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be

significantly affected because the price of new vehicles and the optional headlamps would be only minimally impacted. While the price of new vehicle equipment might be somewhat higher if the optional headlamp is used, the cost of repair of such equipment will be significantly lessened.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103 (formerly section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 (formerly 15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended as follows:

a. The definitions of "Integral Beam Headlamp" and "Replaceable Bulb Headlamp" in Paragraph S4 would be revised to read as set forth below.

b. Paragraphs S5.8.11, S7.2(e), S8.10.1 and S8.10.2 would be added to read as set forth below.

c. Paragraphs S7.4(g), S7.4(h)(2), S7.4(h)(3), S7.5(h), and S8.1 would be revised to read as set forth below.

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

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S4. *Definitions.*

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Integral Beam Headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S7.3 or a replaceable bulb headlamp designed to conform to paragraph S7.5) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that the lens may be designed to be replaceable if the headlamp incorporates a vehicle headlamp aiming device that conforms to S7.8.5.2. An "integral beam headlamp" may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens reflector assembly and one or two replaceable headlamp light sources, except that the lens may be designed to be replaceable if the headlamp incorporates a vehicle headlamp aiming device that conforms to S7.8.5.2. A "replaceable bulb headlamp" may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

S5.8 *Replacement equipment.*

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S5.8.11 A replacement lens for a replaceable bulb headlamp or an integral beam headlamp that is not required to have a bonded lens shall be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly.

S7 *Headlighting requirements.*

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S7.2 (a) * * *

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(e) Each replacement headlamp lens with seal, provided in accordance with S5.8.11, when installed according to the lens manufacturer's instructions on an integral beam or replaceable bulb headlamp, shall not cause the headlamp to fail to comply with any of the requirements of this standard. Each replacement headlamp lens shall be marked with the symbol "DOT", either horizontally or vertically, to constitute certification. Each replacement headlamp lens shall also be marked with the manufacturer and the part or trade number of the headlamp for which it is intended, and with the name and/or trademark of the lens manufacturer or importer that is registered with the U.S. Patent and Trademark Office. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

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S7.4 *Integral Beam Headlighting System.* * * *

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(g) A headlamp with a glass lens need not meet the abrasion resistance test (S8.2). It need not meet the chemical resistance test (S8.3) unless it incorporates a replaceable lens. If, in addition to a glass lens, the headlamp uses a non-plastic reflector, it need not meet the internal heat test of paragraph S8.6.2. A headlamp of sealed design as verified in paragraph S8.9 *Sealing* need not meet the corrosion (S8.4), dust (S8.5), or humidity (S8.7) tests; however, the headlamp shall meet the requirements of paragraphs 4.1, 4.1.2, 4.4 and 5.1.4 for corrosion and connector of SAE Standard J580 DEC86 *Sealed Beam Headlamp Assembly.* An integral beam headlamp may incorporate light sources that are replaceable that are used for purposes other than headlighting.

(h) * * *

* * * * *

(2) After the chemical resistance tests of paragraphs S8.3 and S8.10.1, there shall be no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

(3) After corrosion tests conducted in accordance with paragraphs S8.4 and S8.10.2, there shall be no evidence of external or internal corrosion or rust visible without magnification. Loss of adhesion of any applied coating shall not occur more than 0.125 in. (3.2 mm) from any sharp edge on the inside or outside. Corrosion may occur on terminals only if the current produced during the test of paragraph S8.4(c) is not less than 9.7 amperes.

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S7.5 *Replaceable Bulb Headlamp System.* * * *

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(h) The system shall be aimable in accordance with paragraph S7.8.

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S8 *Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems.* * * *

S8.1 *Photometry.* Each headlamp to which paragraph S8 applies shall be tested according to paragraphs 4.1 and 4.1.4 of SAE Standard J1383 APR85 for meeting the applicable photometric requirements, after each test specified in paragraphs S8.2, S8.3, S8.5, S8.6.1, S8.6.2, S8.7, and S8.10.1 and S8.10.2 if applicable. A 1/4 degree reaim is permitted in any direction at any test point.

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S8.10 *Chemical and corrosion resistance of reflectors of replaceable lens headlamps.*

S8.10.1 *Chemical resistance.* (a) The entire optical surface of the reflector of the headlamp in the headlamp test fixture with the lens removed shall be wiped once to the left and once to the right with a 6-inch square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 2 ounces of one of the test fluids listed in paragraph (b). The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

(b) The test fluids are:

(1) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits);

(2) Lacquer thinner; or

(3) Fluids other than water contained in the manufacturer's instructions for cleaning the reflector.

(c) After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F±7° (23°C±4°) and a relative humidity of 30±10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S8.10.2 *Corrosion.* (a) The headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 24 hours, while mounted in the middle of the chamber.

(b) Afterwards, the headlamp shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F±7° (23°C±4°) and a relative humidity of 30±10 percent and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector shall be cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal shall then be attached according to these instructions and the headlamp tested for photometric performance.

Issued on November 9, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–28382 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 941095–4295; I.D. 090894A]

Endangered and Threatened Species; Deer Creek Summer Steelhead

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

ACTION: Notice of determination.

SUMMARY: NMFS has determined that Deer Creek summer steelhead in Washington do not constitute a "species" under the Endangered Species Act of 1973, as amended, (ESA) and, therefore, do not qualify for listing under the ESA at this time. However, Deer Creek summer steelhead are part of a larger evolutionarily significant unit (ESU) that may warrant listing under the ESA, and for which a status review is currently underway.

ADDRESSES: Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, 503/230–5430, or Marta Nammack, Endangered Species Division, 301/713–2322.

SUPPLEMENTARY INFORMATION:

Petition Background

On September 21, 1993, NMFS received a petition from Washington Trout to list indigenous, naturally-spawning Deer Creek summer steelhead (*Oncorhynchus mykiss*) as an endangered species and to designate critical habitat under the ESA. NMFS published a notice on December 23, 1993 (58 FR 68108), that the petition presented substantial information indicating that the listing may be warranted. To ensure a comprehensive status review, NMFS solicited information and data concerning the present and historic status of the Deer Creek summer steelhead population and whether this population qualifies as a "species" under the ESA. NMFS also requested information on areas that may qualify as critical habitat for Deer Creek summer steelhead. NMFS also initiated an expanded status review for all coastal steelhead in California, Oregon, and Washington. This status review was expanded to include Idaho in response to a petition submitted by the Oregon Natural Resources Council and 15 co-petitioners. NMFS initiated the status review for steelhead throughout its range in the four states on May 27, 1994 (59 FR 27527).

Biological Background

The NMFS Northwest Fisheries Science Center Biological Review Team has conducted a status review and prepared an administrative report summarizing the conclusions of the status review, "Conclusions of the Northwest Fisheries Science Center's Review of a Petition to List Deer Creek Summer Steelhead (North Fork Stillaguamish River, Washington) under the U.S. Endangered Species Act," which provides more detailed information, discussion, and references. This report is available upon request (see **ADDRESSES**) and is summarized below.

Deer Creek is a tributary of the North Fork Stillaguamish River in Washington. The Deer Creek Watershed covers 177 km^2 in the North Cascade Mountains of Washington. Deer Creek and its steelhead fishery have been the subject of many sporting journal articles and popular literature. Logging in the Deer Creek Basin began in the 1920s. Timber harvest activities accelerated in the early 1950s, and approximately 48 percent of the basin was clear-cut between 1952 and 1985. In 1984, a large landslide, which remains active despite restoration efforts, introduced a tremendous amount of sediment into Deer Creek. The 1984 landslide reduced viable spawning and rearing habitat for the summer steelhead population, which was already in decline.

The name steelhead refers to the anadromous form of rainbow trout. Recently, the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *Oncorhynchus mykiss.* This change reflects a belief that all trouts from western North America share a common lineage with Pacific salmon. The present endemic distribution of steelhead extends from the Kamchatka Peninsula,

Asia, east and south, along the Pacific coast of North America, to Malibu Creek in southern California.

Steelhead exhibit a wide variety of life history strategies. In general, steelhead migrate to sea after spending 2 years in fresh water and then spend 2 years in the ocean prior to returning to fresh water to spawn. Deviations from this basic pattern are common. Some spawners survive and return to the ocean for 1 or more years between spawning migrations.

Steelhead exhibit two spawning migration strategies. "Summer steelhead" enter fresh water between May and October, and begin their spawning migration in a sexually immature state. After several months in fresh water, summer steelhead mature and spawn. "Winter steelhead" enter fresh water between November and April with well developed gonads. In drainages with sympatric populations of summer and winter steelhead, there may or may not be temporal or spatial separation of spawning.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, Deer Creek summer steelhead would have to be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate * * * which interbreeds when mature." NMFS published a policy (56 FR 58612, November 20, 1991) on how it will apply the ESA "species" definition to Pacific salmonid species, including steelhead. This policy provides that a salmon population will be considered distinct, and hence a species under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be substantially reproductively isolated from other conspecific population units and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in "Pacific salmon (*Oncorhynchus* spp.) and the Definition of Species under the Endangered Species Act," which is available upon request (see **ADDRESSES**).

Reproductive Isolation

In the Stillaguamish River Basin, three summer-run stocks and one winter-run steelhead stock are recognized. Run timing is similar among the Stillaguamish River Basin summer steelhead stocks; however, spawn timing appears to be later for Deer Creek summer steelhead than for other summer steelhead populations within the basin. Although run timing differs between the Stillaguamish River summer and winter steelhead stocks, there is substantial overlap in the time of spawning of the two run types.

It was commonly thought that the high gradient reach of Deer Creek between approximately river kilometer 2.4 and 7.2 comprised a "cumulative velocity barrier" to winter steelhead (C. Kramer, Area Fish Biologist, Washington Department of Fish and Wildlife (WDFW), pers. comm., May and July 1994). However, other evidence suggests that this barrier may not be permanent, and recent flooding may have shifted the Deer Creek bedload sufficiently to facilitate passage of winter steelhead, thereby allowing for the possibility that summer steelhead are not reproductively isolated from winter steelhead.

In general, genetic studies of coastal steelhead populations have demonstrated that summer and winter steelhead from the same stream tend to resemble one another genetically more than they resemble populations with similar run timing from different drainages. These results suggest that summer and winter steelhead do not represent two independent monophyletic units. Allendorf (1975) reported that coastal summer steelhead, including the Deer Creek population, were "genetically indistinguishable from the coastal winter run populations." A more recent study (Phelps *et al.*, in press) involving a larger set of gene loci found some evidence of differentiation between summer and winter steelhead in the Puget Sound region. The later study also found that Deer Creek summer steelhead are "relatively distinct" from other Puget Sound steelhead and show a higher degree of genetic similarity to winter steelhead from the Stillaguamish and Skykomish rivers than to other summer steelhead populations.

A variety of out-of-basin steelhead stocks have been released in the Puget Sound area, and summer steelhead of Columbia River (Skamania stock) origin have been released in the North Fork Stillaguamish River since the 1960s (C. Kramer, WDFW, pers. comm., May and July 1994). However, recent genetic data (Phelps *et al.* in press) found no evidence that Deer Creek summer steelhead have been substantially affected by these releases.

Ecological/Genetic Diversity

In Oregon, only three coastal basins have naturally-occurring summer steelhead (Siletz, Umpqua, and Rogue basins). In contrast, all major river basins in the North Puget Sound region (Nooksack/Samish, Skagit, Stillaguamish, and Snohomish basins) are known to have naturally-occurring summer steelhead. The discontinuous range of coastal summer steelhead is consistent with the polyphyletic origin of this life history inferred from genetic data. However, the Puget Sound region is (or was) conducive to the development of the summer steelhead life history, and within the Puget Sound region, Deer Creek is not unique, or even unusual, in supporting summer-run steelhead.

The most common age structure for coastal steelhead from British Columbia to California is 2/2 (2 years of freshwater residence followed by 2 years in the ocean). Specific information about the age structure of steelhead in the Puget Sound region is limited. Based on scale samples from fish caught by anglers, Deer Creek summer steelhead are reported to be primarily (95 percent) 2/1, with the remainder being 3/1 (C. Kramer, WDFW, pers. comm., May and July 1994). Other Puget Sound steelhead, both summer- and winter-run, also have the 2/1 life history, but sampling has not been sufficient to quantitatively describe age structure in these populations. According to anecdotal information, the adult size at spawning of other summer steelhead stocks (South Fork Nooksack, Finney Creek, Sauk River, and Canyon Creek) is similar to Deer Creek summer steelhead, and this suggests that other steelhead populations in the Puget Sound region share the same adult body size and other life history features with Deer Creek summer steelhead.

Determination

Deer Creek summer steelhead appear to be temporally and spatially isolated from other populations of summer steelhead in the Stillaguamish River Basin. Genetic data support the hypothesis that Deer Creek summer steelhead are isolated from other Puget Sound steelhead populations for which data are available. However, some uncertainty remains regarding the relationship between Deer Creek summer steelhead and nearby winter-run populations, both in the Stillaguamish River and, perhaps, in

upper Deer Creek. Despite this uncertainty, NMFS has concluded, based on all available information, that Deer Creek summer steelhead probably meet the first criterion to be an ESU—that is, substantial reproductive isolation from other conspecific populations.

Although the genetic data show that Deer Creek summer steelhead are relatively distinct from other Puget Sound steelhead, the genetic differences are not large in an absolute sense. Therefore, these genetic differences provide little insight into the second ESU criterion, contribution to ecological/genetic diversity of the species as a whole. Deer Creek summer steelhead differ from many other coastal steelhead populations in that most of the adults return after only 1 year in the ocean, but the limited available information indicates that this is also observed in other Puget Sound steelhead populations. NMFS found no other phenotypic or life history traits, or habitat features, that distinguish the Deer Creek summer steelhead population from those in adjacent areas. Therefore, NMFS concludes that Deer Creek summer steelhead do not meet the second criterion to be considered an ESU and are not, by themselves, a "species" under the ESA. Therefore, a proposal to list Deer Creek summer steelhead under the ESA is not warranted at this time.

However, Deer Creek summer steelhead are undoubtedly part of a larger ESU that may warrant listing under the ESA, and NMFS will identify the extent of this ESU during its current Washington, Oregon, Idaho, and California steelhead status review (59 FR 27527, May 27, 1994). Detailed information provided in the petition for Deer Creek steelhead will be considered during this expanded status review.

Dated: November 14, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–28682 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 677

[Docket No. 940412–4310; I.D. 102094A]

RIN 0648–AD80

North Pacific Fisheries Research Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to clarify and make minor changes to regulations implementing the North Pacific Fisheries Research Plan (Research Plan). The proposed rule would clarify 1995 observer coverage requirements, revise the definition of the term "processor," specify who is and is not included in the definition of processor, and exempt certain processors included in the definition from the requirement to have a Federal Processor Permit. These clarifications will be incorporated as minor revisions to the instructions accompanying the Federal Processor Permit Application. In addition, the definition of "round weight" will be revised to conform it to recent regulatory changes. This proposed rule is consistent with the intent of the final rule implementing the Research Plan and is intended to reduce confusion during the first year of the fee-collection program authorized under the Research Plan. NMFS expects these changes to be effective by January 1, 1995.

DATES: Comments on this proposed rule must be received by December 2, 1994.

ADDRESSES: Comments on this proposed rule may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori J. Gravel. Copies of the Research Plan and the environmental assessment/regulatory impact review prepared for the Research Plan may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Copies of the Observer Plan may be obtained from NMFS at the address noted above.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). A correction subsequently was published in the Federal Register that delayed specified parts of the implementing rule until January 1, 1995 (59 FR 51874, October 13, 1994). The purpose for, and description of, the Research Plan are contained in the preamble to that final rule.

NMFS has identified five areas of ambiguity and inconsistency in the final rule implementing the Research Plan. Consequently, the following changes are proposed:

1. The 1995 observer coverage requirements set out at § 677.10(a)(1)(i)(C) are clarified to continue to exempt from observer coverage any vessel that delivers unsorted codends to a processor.

2. The definition of "processor" under the Research Plan is amended to make clear NMFS' interpretation that tender vessels are not considered processors for purposes of the Research Plan, and that fishermen who transfer fish to persons outside of the United States are included in the definition.

3. The requirement for a Federal Processor Permit is also revised. Certain persons, although considered processors under the definition of that term, are not required to obtain this permit. Fishermen who sell fish directly to a restaurant or to another individual for use as bait or personal consumption or fishermen who transfer fish to a person outside the United States are not required to have a processor permit.

4. The Federal Processor Permit Application (Form FPP–1) is revised to reflect changes referenced in items 2. and 3., above; and

5. The definition of "round weight or round-weight equivalent" is revised to reflect the recent amendment of the definition of this term in 50 CFR 672.2 and 675.2 (59 FR 50699, October 5, 1994).

A further description of and justification for the proposed regulatory amendments listed under the first three items follow.

1995 Observer Coverage Requirements

Prior to the effective date of the Research Plan, Amendments 13 and 18 to the FMPs for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area respectively, authorized the Observer Plan, which set out domestic observer coverage requirements for groundfish vessels and processors. The Observer Plan stated "* * * operators of catcher vessels which transport unsorted codends to a mothership are not required to comply with this Observer Plan." On April 29, 1994, a final rule was published in the Federal Register to revise observer coverage requirements that inadvertently deleted this exemption for catcher vessels 125 ft (38.1 m) length overall (LOA) or longer (59 FR 22133). This erroneous regulatory language was incorporated into the final rule implementing 1995 observer coverage requirements under the Research Plan (§ 677.10(a)(1)(i)(C)). The result is that current regulations under the Research Plan require catcher vessels 125 ft (38.1 m) LOA or longer to carry an observer at all times, even

when the vessel is delivering unsorted codends to a processor and no opportunity exists for the observer to observe the catch.

This proposed rule would revise regulations at § 677.10(a)(1)(i)(C) to correct this error by requiring a catcher vessel 125 ft (38.1 m) LOA or longer to carry an observer 100 percent of its fishing days. The term "fishing days" currently is defined at § 677.2 to exclude days during which a vessel only delivers unsorted codends to a processor.

Definition of the Term "Processor"

The definition of the term "processor," as published in the September 6, 1994, final rule implementing the Research Plan, includes any person, except a restaurant, who receives fish from fishermen for commercial purposes. The final rule implementing the Research Plan added the exclusion for restaurants, but indicated the intent was that all landings of fish harvested in Research Plan fisheries be accounted for so that fees may be assessed based on the amount of fish landed and an annually specified fee per pound.

Under the definition published in the September 6, 1994, final rule, a tender vessel receiving fish from fishermen for delivery to a shoreside processing facility could be considered a processor. Inclusion of tender vessels as processors for purposes of the Research Plan was not the intent of the final rule implementing the Research Plan and is unnecessary to account for landings of fish. Accordingly, NMFS proposes to revise the definition of "processor" so that it is clear that tender vessels are not included.

The definition of processor in the September 6, 1994, final rule also inadvertently excluded fishermen who transport fish to persons outside the United States. To date, the amount of fish transferred by fishermen to persons outside the United States is believed to be small. However, the halibut and sablefish Individual Fishing Quota (IFQ) program scheduled for implementation in 1995 (58 FR 59375, November 9, 1993) is anticipated to result in increased deliveries of these species to persons in Canada and elsewhere outside the United States. Such deliveries could result in unreported landings. Consequently, NMFS proposes to revise the definition of "processor" to clarify that these fishermen are considered processors so that they are held accountable for payment of billed fee assessments.

Exemption of Certain Processors From Applying for a Processor Permit

The final rule implementing the Research Plan requires that all processors of fish from Research Plan fisheries must have a Federal Processor Permit. This requirement is reasonable for those processors that anticipate participation in a Research Plan fishery, but is not necessary for a fisherman who delivers fish outside of the United States or sells fish directly to restaurants or to individuals for use as bait or personal consumption. Furthermore, the fisherman may not be the owner of the catcher vessel. Vessel owners often cannot anticipate the number or identity of operators of their vessels during a given fishing year. As a result, individual fishermen who are processors under the Research Plan may be difficult to identify until after an Alaska Department of Fish and Game (ADF&G) fish ticket or other documentation of landing has been submitted. Therefore, this proposed rule would make it explicit that these processors are exempt from such requirements.

NMFS further notes its intent that the following sections of the Observer Plan still are effective during the first year of the Research Plan (1995): (1) Standards of observer conduct (attachment number 3); and (2) the description, specifications, and work statement for certified domestic observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation (attachment number 4). Copies of the Observer Plan dated May 1994 are available from NMFS (see **ADDRESSES**).

After the first year of the Research Plan, standards and criteria for conduct, certification, conflict of interest, and revocation of certification of observers and observer contractors will be included as part of the contractual arrangements between NMFS and observer contractors.

Classification

This proposed rule includes minor revisions to the instructions accompanying the collection of information approved by the Office of Management and Budget, OMB control number 0648–0206 (Processor Permit Application). No new information is collected, but the number of persons required to comply with this collection-of-information requirement is reduced.

The North Pacific Fishery Management Council, NMFS, and the ADF&G prepared a final Regulatory Flexibility Analysis as part of the Regulatory Impact Review prepared for the Research Plan. A copy of this analysis is available from the Council (see **ADDRESSES**).

NMFS finds that this proposed action should be implemented as soon as possible so that clear instructions may be sent out to the industry that reflect what will be in place for the 1995 fee collection program authorized under the Research Plan. Delay in implementing the proposed revisions would create unnecessary confusion within the fishing industry concerning implementation of the Research Plan during 1995. NMFS is providing a 15-day comment period to expedite final action while allowing an opportunity for public comment.

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

List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated: November 15, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 677 is proposed to be amended as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

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

2. In § 677.2, the definitions of "processor" and paragraph (1) of "round-weight or round-weight equivalent" are revised and the definition of "tender vessel" is added, in alphabetical order, to read as follows:

§ 677.2 Definitions.

* * * * *

Processor means any shoreside processing facility or vessel that processes fish, any person who receives fish from fishermen for commercial purposes, any fisherman who transfers fish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption. Processor does not include a tender vessel or a restaurant, or a person who receives fish from fishermen for personal consumption or bait.

* * * * *

Round weight or round-weight equivalent means:

(1) *For groundfish or halibut*—the weight of fish calculated by dividing the

weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j) of this chapter, or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

Tender vessel means a vessel that does not process fish but that is used to transport fish from another vessel to a shoreside processing facility or to a vessel that processes fish for commercial use or consumption, or for delivery to such a processing facility or vessel.

3. In § 677.4, paragraph (a) is revised to read as follows:

§ 677.4 Permits.

(a) *General.* In addition to the permit and licensing requirements at § 301.3 of this title and §§ 672.4, 675.4, and § 676.13 of this chapter, a processor of fish from a Research Plan fishery must have a Federal Processor Permit issued by the Regional Director under this section, except that this requirement does not apply to any fisherman who transfers fish outside of the United States, or any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption. Federal Processor Permits will be issued without charge.

* * * * *

4. In § 677.7, paragraph (e) is revised to read as follows:

§ 677.7 General prohibitions.

* * * * *

(e) Process or receive fish from a Research Plan fishery without a valid permit issued pursuant to this part.

* * * * *

5. In § 677.10, paragraph (a)(1)(i)(C) is revised to read as follows:

§ 677.10 General requirements.

(a) * * *

(1) * * *

(i) * * *

(C) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry a NMFS-certified observer during 100 percent of its fishing days while fishing for groundfish, except for a vessel fishing for groundfish with pot gear as provided in paragraph (a)(1)(i)(F) of this section.

* * * * *

Figure 1 to Part 677 [Amended]

6. Figure 1 to part 677, Federal Processor Permit Application (Form FPP–1), is revised to read as follows:

BILLING CODE 3510–22–M

NOAA 88-155

OMB No. 0648-0206, expires 4/30/97

FEDERAL FISHERIES PERMIT APPLICATION FEDERAL PROCESSOR PERMIT APPLICATION (FPP-1)	United States Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service Alaska Region P.O. Box 21668 Juneau, Alaska 99802-1668

BLOCK A - PERMIT AMENDMENT INFORMATION

If this is an application for an amended permit, provide your current Federal Fisheries Permit number and/or Federal Processor Permit number: _____

Check the item(s) that have changed:

[ ] Vessel information (Block B)
[ ] Shoreside processor information (Block C)
[ ] Owner information (Block D)
[ ] Federal Fisheries Permit information (Block E)
[ ] Federal Processor Permit information (Block F)

BLOCK B - VESSEL INFORMATION

1. Vessel Name		
2. ADF&G Number	3. Coast Guard Number	7. Vessel Telephone Number
4. Homeport (City, state)		8. Vessel FAX Number
5. Length Overall (Feet)	6. Net Tonnage	9. INMARSAT Number

BLOCK C - SHORESIDE PROCESSOR INFORMATION

1. Processor Name	
2. Business Street Address (Street, city, state, zip code)	4. Telephone Number
3. ADF&G Processor Code	5. FAX Number

BLOCK D - OWNER INFORMATION

1. Owner Name(s)	
2. Business Mailing Address (Street or box, city, state, zip code)	4. Telephone Number
3. Managing Company, if any	5. FAX Number

BLOCK E - FEDERAL FISHERIES PERMIT INFORMATION

FEDERAL FISHERIES PERMITS MUST BE RENEWED ANNUALLY.

FISHERIES: The following fisheries in the 3-200 mile zone off Alaska require vessels to have a Federal Fisheries Permit pursuant to 16 USC 1801-1882. Check one, or both, as appropriate:

[ ] Gulf of Alaska Groundfish [ ] Bering Sea and Aleutian Islands Groundfish

VESSEL OPERATIONS CATEGORIES: Indicate the type of operations you conduct in the groundfish fishery. Check Support Vessel OR check any combination of the other four categories.

[ ] Catcher Vessel
[ ] Catcher/Processor (complete Block F also) *
[ ] Mothership (complete Block F also) *
[ ] Tender Vessel
[ ] Support Vessel

* Catcher/Processor and Mothership permits are not valid unless accompanied by a Federal Processor Permit for groundfish.

CATCHER VESSELS AND CATCHER/PROCESSORS ONLY:

GEAR TYPE: Check ONLY the gears used for GROUNDFISH fishing:

[ ] Trawl [ ] Hook and line [ ] Pots [ ] Jig/troll [ ] Other: _____

CATCHER VESSELS ONLY:

[ ] Check here if the only groundfish you expect to catch is bycatch during halibut, crab, or salmon fisheries.
[ ] Check here if you expect to target on groundfish, but only on sablefish (blackcod) in the Gulf of Alaska.

BLOCK F - FEDERAL PROCESSOR PERMIT INFORMATION

FEDERAL PROCESSOR PERMITS MUST BE RENEWED SEMI-ANNUALLY.

Federal Processor Permits are required for certain processors of the following fisheries. Check one, or any combination, as appropriate. (See instructions for definition of processors required to obtain a permit.)

[ ] Gulf of Alaska Groundfish (GOA, 3-200 mile zone) *
[ ] Bering Sea and Aleutian Islands Groundfish (BSAI, 3-200 mile zone) *
[ ] Bering Sea and Aleutian Islands King and Tanner Crab (3-200 mile zone)
[ ] North Pacific Halibut (Convention waters off Alaska, i.e. State and Federal waters)

* Groundfish Catcher/Processors and Mothership Processor Vessels that operate inside the 3-200 mile zone off Alaska are also required to have a Federal Fisheries Permit (see Block E).

Indicate the semi-annual permitting period for which you are applying: [ ] January 1 to June 30 Year: _____
[ ] July 1 to December 31

BLOCK G - SIGNATURE

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct and complete.

Applicant's name (please print or type)	Signature	Date

INSTRUCTIONS

A separate application must be completed for each vessel or processor. Type or print legibly in ink; retain a copy of completed application. Completed forms should be mailed to: NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. If you have any questions, please call Enforcement at 907-586-7225.

BLOCK A - PERMIT AMENDMENT INFORMATION

If you already have a valid Federal permit, but the information originally provided on your application has changed, you should fill out this block. Provide your current Federal Fisheries Permit number and/or your Federal Processor Permit number, and check the item(s) that have changed. Written notification of changes must be received within 10 days of the date of the change.

BLOCK B - VESSEL INFORMATION

Complete Block B if the permit is for a vessel.

Vessel Name - Enter complete vessel name as displayed in official documentation.
ADF&G Number - Enter 5-digit State of Alaska Department of Fish & Game (ADF&G) number (example: 51233).
Coast Guard Number - Enter Coast Guard documentation number (example: 566722) or state registration number (example: AK3456C).
Homeport - Enter homeport (city and state) as recorded in official documentation.
Length Overall - Enter the vessel's length overall in feet, which is defined as the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.
Net Tonnage - Enter registered net tonnage as stated in official documentation.
Vessel Telephone, FAX, and INMARSAT Numbers - Enter telephone, FAX, and INMARSAT (satellite communication) numbers used onboard the vessel.

BLOCK C - SHORESIDE PROCESSOR INFORMATION

Complete Block C if the permit is for a shoreside processor, which is defined as any person, that receives unprocessed fish, except Catcher/Processors, Mothership Processor Vessels, Tender Vessels, restaurants, or persons buying fish from fishermen for use as bait or personal consumption.

Processor Name - Enter complete name as displayed in official documentation.
Business Street Address - Enter complete street address of the shoreside processing facility, including street number, city, state and zip code.
ADF&G Processor Code - Enter the Alaska Department of Fish and Game Processor Number assigned to the processor.
Telephone and FAX Numbers - Enter telephone and FAX numbers used at the shoreside processor.

BLOCK D - OWNER INFORMATION

Enter information on the owner of the vessel listed in Block B or the shoreside processor listed in Block C.

Owner Name(s) - Enter the full name(s) of the vessel or processor owner(s). If there is more than one owner, list the principal owner first; the permit will be issued to the first owner listed, with an ET AL. notation. The permit MUST be issued to the owner of the vessel or processor, not operators or lessees.
Business Mailing Address - Enter your complete PERMANENT business mailing address, including state and zip code. Your permit will be sent to this address. If you need to have to your permit sent to a temporary address, please enter your PERMANENT business address on the application and attach a note with your temporary address.
Managing Company - Enter the name of any company (other than the owner) that manages the operations of your vessel or processor.
Telephone and FAX Numbers - Enter telephone and FAX numbers used by the vessel or processor owner. It is very important that you provide a telephone number where we can contact you, or where we can leave messages for you, if questions arise concerning your application.

BLOCK E - FEDERAL FISHERIES PERMIT INFORMATION

Federal Fisheries Permits are required for all vessels conducting groundfish operations in the 3-200 mile zone off Alaska. This includes vessels fishing for groundfish, vessels processing groundfish, and support vessels assisting other groundfish vessels. "Groundfish" means pollock, Pacific cod, sablefish, Atka mackerel, any species of flatfish except Pacific halibut, rockfish, smelt, eulachon, capelin, sharks, skates, sculpins, octopus, and squid.

Fisheries - Indicate the fishery or fisheries for which you are applying. You may apply for a single fishery or both.

Vessel Operations Categories - Indicate the type of operations you conduct in the groundfish fishery. Check Support Vessel, or any combination of Catcher Vessel, Catcher/Processor, Mothership, and Tender Vessel. (A vessel permitted as a Catcher Vessel, Catcher/Processor, Mothership, and/or Tender Vessel may conduct all operations authorized for a Support Vessel.) These categories are defined as follows:

Catcher Vessel - A vessel that is used for catching fish and that does not process onboard.

Catcher/Processor - A vessel that is used for catching fish and processing that fish.

Mothership - A vessel that receives and processes fish from other vessels.

Tender Vessel - A vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor, mothership, or buying station.

Support Vessel - Any vessel that is used in support of a permitted vessel, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. This category does not include processors or Tender Vessels.

Gear Type - Groundfish Catcher Vessels and Catcher/Processors need to indicate the gear type(s) used for groundfish operations.

Catcher Vessels Only - Indicate whether the only groundfish you catch is bycatch from halibut, crab, or salmon fisheries, or whether the only groundfish you expect to target on is blackcod in the Gulf of Alaska. Your answers will not restrict you from participating in other groundfish fisheries; they will only be used to determine whether NMFS will send you a 25-page Catcher Vessel logbook, or a 50-page logbook.

BLOCK F - FEDERAL PROCESSOR PERMIT INFORMATION

Any facility or vessel that processes fish from Research Plan fisheries for commercial use or consumption and any person, except restaurants or tender vessels, who receives fish from fishermen for commercial purposes must have a Federal Processor Permit.

Indicate the fishery or fisheries for which you are applying. You may apply for a single fishery or any combination.

Indicate the semi-annual period for which you are applying. You may not apply for both periods. Processors who receive permits for January 1-June 30 will receive renewal applications for permits for the second half of the year. All Research Plan fees must be paid before the next semi-annual processor permit will be issued.

BLOCK G - SIGNATURE

The owner must sign and date the application certifying that all information is true, correct, and complete to the best of the owner's knowledge and belief. The application will be considered incomplete without this signature.

LOGBOOKS

If you apply for a Federal Fisheries Permit, you will receive a logbook for each Vessel Operations Category that you check. For example, if you check Catcher Vessel and Catcher/Processor, you will receive a Catcher Vessel Daily Fishing Logbook AND a Catcher/Processor Daily Cumulative Production Logbook. There are a few exceptions:

Support Vessels do not receive logbooks.

Catcher Vessels under 5 net tons do not receive Catcher Vessel logbooks.

A Shoreside Processor logbook will also be sent with each Federal Processor Permit for groundfish issued to a shoreside processor. A Mothership logbook will be sent with each Federal Processor Permit for groundfish issued to a vessel that does not also have a Federal Fisheries Permit.

SPECIAL HANDLING OF PERMITS

Please allow at least 10 days for processing your permit. Do not wait until right before an opening to apply for your permit -- we may not be able to get it to you in time. You may fax your permit application to us at 907-586-7313, but we cannot fax your permit back to you. We cannot pay for express mailing if you do apply late. We can express mail your permit to you only if you send us an express mail envelope with the correct amount of postage prepaid. Please send the largest envelope available, approximately 12" X 18", or send express mail stamps UNATTACHED to an envelope. If the express mail envelope you send is too small or does not have enough postage attached, we will be required to send your permit and logbooks to you by regular U.S. mail. Keep in mind that we send the appropriate logbook(s) WITH Federal Fisheries Permits for groundfish and with Federal Processor Permits. See ***LOGBOOKS*** on the preceding page to determine what logbook(s) you will be sent, if any. Following is the approximate size and weight of each logbook:

	Dimensions	Weight
Catcher/Vessel logbook	9" X 12.5"	2 pounds
Catcher/Processor logbook	9" X 12.5"	3 pounds
Mothership logbook	9" X 12.5"	3 pounds
Buying Station logbook	9" X 12.5"	2 pounds
Shoreside Processor logbook	11" X 17"	3 pounds

OTHER FISHERIES AND LICENSES

Salmon Power Troll - State of Alaska Interim Use and Limited Entry Power Troll licenses serve as a Federal permit. If you do not currently possess either State license, a Federal permit may be issued provided that sometime during the years 1975-1977, you: a) operated a vessel in the 3-200 mile zone off Alaska; b) engaged in commercial fishing for salmon from that vessel in the 3-200 mile zone off Alaska; AND c) landed salmon caught with power troll gear. If you believe that you meet these conditions, please contact NMFS at 907-586-7225. You will be required to provide fish tickets or other landing receipts showing compliance with the above requirements.

Halibut - A Federal Processor Permit is required for anyone that processes Pacific halibut off Alaska. In addition, vessels that fish for halibut are required to have a license from the International Pacific Halibut Commission (IPHC). Questions regarding IPHC licenses should be directed to: International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145-2009. Phone: 206-634-1838.

Tanner Crab and King Crab - State of Alaska area registration serves as the required Federal area registration.

State of Alaska Permits - Contact the Commercial Fisheries Entry Commission at 907-789-6150 for information on State of Alaska permits and regulations.

PUBLIC REPORTING BURDEN STATEMENT

NMFS estimates that the public reporting burden will average 0.33 hour per response for completing the Federal Fisheries Permit and Federal Processor Permit application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), and to the Office of Management and Budget, Paperwork Reduction Project (0648-0206), Washington, DC 20503 (Attn: NOAA Desk Officer).

[FR Doc. 94-28683 Filed 11-17-94; 8:57 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 59, No. 223
Monday, November 21, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–123–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–280–01	AgrEvo USA	10/07/94	Canola plants genetically engineered to express tolerance to the herbicide glufosinate.	California
94–284–01	University of Chicago	10/11/94	*Arabidopsis thaliana* plants genetically engineered to express tolerance to the herbicide chlorsulfuron.	Illinois.

Done in Washington, DC, this 15th day of November 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–28669 Filed 11–18–94; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will be convened at 8:30 a.m. and adjourn at 5:00 p.m. on Monday, December 12, 1994, in the U.S. Commission on Civil Rights Conference Room 540, 624 Ninth Street NW, Washington, D.C. 20425. The purpose of the meeting is to gather information on home lending discrimination in the District of Columbia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Maria Charito Kruvant, 202–966–5804, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–28601 Filed 11–18–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Kansas Advisory Committee to the Commission will hold a meeting on December 8, 1994, from 10:00 a.m. until 3:00 p.m. at the Kansas Alumni Association Building, Main Campus at Jayhawk Boulevard, Board Room, Lawrence, Kansas 66044. The purpose of the meeting is to collect information on civil rights issues in

order to plan for future projects in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–28600 Filed 11–18–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Missouri Advisory Committee to the Commission will hold a meeting on December 16, 1994, from 2:00 p.m. until 6:00 p.m. at the Kansas City Marriott Allis Plaza, 200 West 12th Street, Kansas City, Missouri 64105. The purpose of the meeting is to discuss follow-up activities on the recent Bootheel report and to plan for future projects in Missouri.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–28602 Filed 11–18–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 713]

Expansion of Foreign-Trade Zone 76; Bridgeport, CT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Bridgeport, Connecticut, grantee of Foreign-Trade Zone No. 76, for authority to expand its general-purpose zone at sites in Bridgeport, Connecticut, within the Bridgeport Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on September 16, 1993 (Docket 51–93, 58 FR 50330, 9/27/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of November 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–28690 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 716]

Grant of Authority for Subzone Status; Group Technologies Corporation (Electronic/Computer/ Telecommunication Equipment) Tampa, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Tampa, Florida, grantee of Foreign-Trade Zone 79, for authority to establish special-purpose subzone status at the electronic/computer/ telecommunication equipment manufacturing plant of Group Technologies Corporation located in Tampa, Florida, was filed by the Board on July 26, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 35–93, 58 FR 41709, 8/5/93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 79B) at the Group Technologies Corporation plant in Tampa, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations. including § 400.28.

Signed at Washington, DC, this 9th day of November 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–28692 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 715]

Expansion of Foreign-Trade Zone 38; Spartanburg County, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone No. 38, for authority to expand its general-purpose zone in Spartanburg County, South Carolina, within the Greenville/ Spartanburg Customs port of entry, was

filed by the Foreign-Trade Zones (FTZ) Board on October 29, 1993 (Docket 53–93, 58 FR 59236, 11/8/93) (Amendment: 59 FR 29983, 6/10/94);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of November 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–28691 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review period is September 1, 1990 through August 31, 1991. This review involves one manufacturer/exporter of this merchandise, the Allatt Paving Division of Ingersoll-Rand Canada Inc. (Allatt). We preliminarily determine the dumping margin for this period to be 11.04 percent. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 47450) of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada for the period September 1, 1990 through August 31, 1991. On September 23, 1991, the petitioner, Blaw Knox Construction Equipment Co., requested an administrative review of the antidumping finding. We initiated the review on October 18, 1991 (56 FR 52254). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is September 1, 1990 through August 31, 1991. This review involves one manufacturer/exporter of this merchandise, Allatt.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) and exporter's sales price (ESP), as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on PP, in accordance with section 772(b) of the Tariff Act. Where sales to the first unrelated purchaser occurred after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Tariff Act.

PP and ESP were based on the packed, f.o.b. prices to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage charges, U.S. and foreign inland freight, U.S. duties, and discounts. For ESP sales, we also deducted commissions to unrelated parties, credit, and indirect selling expenses.

We adjusted USP for taxes in accordance with our practice as outlined in *Silicon Manganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994. There were no other adjustments claimed or allowed.

Foreign Market Value

In calculating FMV, the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, f.o.b. company warehouse price in the home market. Where applicable, we made adjustments for discounts, inland freight, credit expenses, commissions, advertising expenses, packing expenses, and differences in merchandise. We adjusted FMV for taxes in accordance with our practice as outlined in *Silicon Manganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994.

In light of the CAFC's decision in *Ad Hoc Committee of AD-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13, F3d 398 (CAFC 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. We instead will adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below.

When USP is based on PP, we only adjust for home market movement charges through the COS provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration. Moreover, in order to determine whether pre-sale movement expenses are direct, the Department will examine the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked

to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse also must be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense.

When USP is based on ESP, the Department makes COS adjustments for movement expenses in the same manner as in PP situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we adjust for any pre-sale movement charges which are treated as indirect selling expenses.

In the present case, because the company's warehousing expense could not be tied directly to either a particular customer or sales of the subject merchandise, it was reported and was treated as an indirect selling expense. Further, no pre-sale movement costs were claimed. Therefore, no COS adjustment has been made for these costs.

In making the ESP offset, we deducted indirect selling expenses from foreign market value in an amount up to the amount of indirect selling expenses incurred in the U.S. market.

When making comparisons with PP sales, we deducted home market commissions to unrelated parties, home market credit expenses, home market advertising, home market packing, and home market post-sale inland freight from FMV and added U.S. commissions, U.S. credit expenses, U.S. advertising, and U.S. packing to FMV.

For those products sold in the United States for which there were no sales of identical or similar home market models, we calculated FMV based on CV in accordance with section 773(e) of the Tariff Act. We calculated constructed value by adding material and fabrication costs, selling, general and administrative expenses (SG&A), profit, and U.S. packing. Since actual SG&A expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual SG&A expenses. We used the statutory minimum of eight percent for profit. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the margin for Allatt is 11.04 percent for the period September 1, 1990 through August 31, 1991.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than ten days after publication of this notice. 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 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 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. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the "all other" rate will be 20.12 percent. On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mongul Corporation and the Torrington Company* v. *United States*, 839 F. Supp. 864 (CIT 1993), decided that once an "all other" rate is established, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions it is appropriate to reinstate the original "all others" rate from the original investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders as the "all others" rate for cash deposits in all current and future administrative reviews.

In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury less-than-fair-value investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury less-than-fair-value investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate of 20.12 percent established in the first final results published by the Department in the **Federal Register** on February 16, 1982 (47 FR 6681). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement will result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 11, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28693 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Anaheim-Santa Ana, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Anaheim-Santa Ana Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Anaheim-Santa Ana, California Metropolitan Area. The award number of the MBDC will be 09–10–95008–01.

DATES: The closing date for applications is *January 3, 1995.* Applications must be received in the MBDA Headquarters' Field Coordination Division on or before *January 3, 1995.* A pre-application conference will be held on December 5, 1994, from 10:00 a.m. to 2:00 p.m., at Orange Chamber of Commerce, One City Boulevard, West, Suite 401, Orange, California 92668, (714) 634–2900.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue NW., Room 5075, Washington, DC 20230, (202) 482–6022.

FOR FURTHER INFORMATION CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1995 to April 30, 1996, is estimated at $388,898. The total Federal amount is $330,563 and is composed of $322,500 plus the Audit Fee amount of $8,063. The application must include a minimum cost share of 15%, $58,335 in non-federal (cost-sharing) contributions for a total project cost of $388,898. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities..

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion

whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bid for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: November 9, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–28630 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Salinas, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: (Cancellation).

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program, to operate an MBDC in the Salinas Metropolitan Area. The previous announcement (closing date: July 18, 1994) was published in the Tuesday, June 7, 1994 issue, Page 29419 of the **Federal Register.**

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: November 9, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–28626 Filed 11–17–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Salinas, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Salinas, California Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Salinas Metropolitan Area. The award number of the MBDC will be 09–10–95002–01.

DATES: The closing date for applications is *January 3, 1995.* Applications must be received in the MBDA Headquarters' Field Coordination Division on or before *January 3, 1995.* A pre-application conference will be held on December 7, 1994, from 10:00 a.m. to 2:00 p.m., at the Salinas Community Center, 940 North Main Street, Salinas, California 93906, (408) 758–7341.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue NW., room 5075, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1995 to April 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions

for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Department regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent accounts is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: November 9, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–28628 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–12–M

Business Development Center Applications: Indianapolis, IN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: (Cancellation).

SUMMARY: The Minority Business Development Agency is canceling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program, to operate an MBDC in the Indianapolis Metropolitan Area. The previous announcement (closing date: August 31, 1994) was published in the Friday, July 15, 1994 issue, Page 36164 of the **Federal Register**.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: November 10, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–28627 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Indianapolis, IN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Indianapolis, Indiana, Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Indianapolis Metropolitan Area. The award number of the MBDC will be 05–10–95001–01.

DATES: The closing date of applications is *January 3, 1995.* Applications must be received in MBDA's Field Coordination Division on or before *January 3, 1995.* A pre-application conference will be held on *December 6, 1994,* at 10:00 a.m., at the Federal Building, 575 North Pennsylvania Street, Conference Room 284, Indianapolis, Indiana 46204.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Office of Operations and Regional Management, Field Coordination Division, 14th and Constitution Avenue, N.W., Room 5075, Washington, D.C. 20230, (202) 482–6022.

FOR FURTHER INFORMATION CONTACT: David Vega at (312) 353–0182.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1995 to April 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statement

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, section 105(are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Loggying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: November 10, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–28629 Filed 11–18–94; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: Candidate Procedures; USMA Forms 5–518, 5–520, 21–16, 21–23, 21–25, 21–26, FL 5–2, FL 5–26, FL 5–497, FL 5–515, FL 21–8, FL 21–14, FL 261, FL 480–1, FL 481, FL 520, and FL 546.

Type of request: Reinstatement.

Number of respondents: 103,600.

Responses per respondent: 1.

Annual responses: 103,600.

Average burden per response: 13 minutes.

Annual burden hours: 21,242.

Needs and uses: Candidates for admission to the U.S. Military Academy provide personal background information in responding to this information collection. The information collected hereby enables the West Point admissions committee to make subjective determinations on the academic, as well as non-academic, experience of applicants. It is also utilized by West Point's Office of Institutional Research for correlation with success in graduating, and in subsequent military careers.

Affected public: Individuals or households.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28659 Filed 11–18–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on December 20–21, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issues dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: November 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28660 Filed 11–18–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Use of DNA Technology for Identification of Ancient Remains

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Use of DNA Technology for Identification of Ancient Remains will meet in open session on January 20, 1995 at the Pentagon, Room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call LCDR Mark Jensen at (703) 284–0942.

Dated: November 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28661 Filed 11–18–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on December 14–15, 1994 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756–2096.

Dated: November 16, 1994.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28662 Filed 11–18–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel task force on Naval Surface Warship Design will meet December 6, 1994, from 9:00 a.m. to 4:00 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of the meeting is to conduct discussions about special access programs. These matters being discussed constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: November 9, 1994.

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–28638 Filed 11–18–94; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 21, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 14, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Application Package for the Centers for International Business Education Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 60.
Burden Hours: 2,100.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The form will be used by State Educational agencies to apply for funding under the Centers for International Business Education Program. The Department will use the information to make grant awards.

[FR Doc. 94–28584 Filed 11–18–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11346 Iowa]

FORIA Hydro Corp.; Notice of Availability of Draft Environmental Assessment

November 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing, unlicensed Fort Dodge Mill Dam Hydroelectric Project, located on the Des Moines River, Webster County, Iowa, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 11346 to all comments. For further information, please contact Mary Golato, Environmental Coordinator, at (202) 219–2804.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28615 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1651–013 Wyoming]

Swift Creek Power Co.; Notice of Availability of Final Environmental Assessment

November 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Swift Creek Project, located on the Swift Creek, near the town of Afton, in Lincoln County, Wyoming, and has prepared a final environmental assessment (EA) for the project.

In the final EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the final EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28610 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8278–013]

Notice of Application

November 15, 1994.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Transfer of License
b. Project No: 8278–013
c. Date Filed: November 7, 1994
d. Applicant: Crystal Springs Hydroelectric Company
e. Name of Project: Cedar Draw Creek Project
f. Location: Located on Cedar Draw Creek in Twin Falls County, Idaho
g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r)
h. Applicant Contact: Mr. Dell Keehn, Crystal Springs Hydroelectric, L.P., 11225 SE 6th, Suite 100, Bellevue, WA 98004, (206) 637–1251
i. FERC Contact: Diane M. Murray, (202) 219–2682
j. Comment Date: December 12, 1994
k. Description of Project: The licensee proposes to transfer its license to facilitate project financing and requests expedited consideration of the transfer in order to avoid a technical foreclosure.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28611 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11331–002 Utah]

Upper Falls Hydro Associates, dba Current Power Technologies, Inc.; Notice of Surrender of Preliminary Permit

November 15, 1994.

Take notice that Upper Falls Hydro Associates, Permittee for the Upper Falls Project No. 11331, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11331 was issued November 5, 1993, and would have expired October 31, 1996. The project would have been located on Upper Falls Creek, in Utah County, Utah.

The Permittee filed the request on November 7, 1994, and the preliminary permit for Project No. 11331 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28614 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11330–002 Utah]

South Fork Hydro Associates, dba Current Power Technologies, Inc.; Notice of Surrender of Preliminary Permit

November 15, 1994.

Take notice that South Fork Hydro Associates, Permittee for the South Fork Project No. 11330, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11330 was issued November 5, 1993, and would have expired October 31, 1996. The project would have been located on the South Fork Provo River, in Utah County, Utah.

The Permittee filed the request on November 7, 1994, and the preliminary permit for Project No. 11330 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28613 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11325–001 Utah]

Cherry Creek Hydro Associates, dba Current Power Technologies, Inc.; Notice of Surrender of Preliminary Permit

November 15, 1994.

Take notice that Cherry Creek Hydro Associates, Permittee for the Cherry Creek Project No. 11325, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11325 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on Cherry Creek, in Cache County, Utah.

The Permittee filed the request on November 7, 1994, and the preliminary permit for Project No. 11325 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28612 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11358–001 Utah]

Guardsman Way Hydro Associates, dba Current Power Technologies, Inc.; Notice of Surrender of Preliminary Permit

November 15, 1994.

Take notice that Guardsman Way Hydro Associates, Permittee for the

Guardsman Way Project No. 11358, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11358 was issued May 13, 1993, and would have expired April 30, 1996. The project would have been located on Salt Lake City Terminal/Park Reservoir, in Salt Lake County, Utah.

The Permittee filed the request on November 7, 1994, and the preliminary permit for Project No. 11358 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28616 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11376–001 Utah]

Rock Canyon Hydro Associates, dba Current Power Technologies, Inc; Notice of Surrender of Preliminary Permit

November 15, 1994.

Take notice that Rock Canyon Hydro Associates, Permittee for the Rock Canyon Project No. 11376, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11376 was issued May 13, 1993, and would have expired April 30, 1996. The project would have been located within Unita National Forest, on Rock Canyon Creek, in Utah County, Utah.

The Permittee filed the request on November 7, 1994, and the preliminary permit for Project No. 11376 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28617 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–14–023]

Algonquin Gas Transmission Co.; Notice of Refund Report

November 15, 1994.

Take notice that on October 28, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing with the Federal Energy Regulatory Commission a Refund Report showing the amounts that were refunded pursuant to the Stipulation and Agreement (Agreement) filed with the Commission on March 1, 1994 and April 25, 1994. The Agreement was approved by the Commission's "Order on Settlements" issued July 8, 1994.

The report states that on October 14, 1994, Algonquin refunded $29,151,848.42, including interest of $1,225,514.06, to its affected customers. Algonquin states that the refund was calculated in accordance with Article II of the Agreement and that interest was computed in accordance with 18 CFR 154.67(c)(2).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 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 November 21, 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 wit the Commission and are available for the public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28623 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–1–001]

Colorado Interstate Gas Co., Notice of Tariff Compliance Filing

November 15, 1994.

Take notice that on November 10, 1994, Colorado Interstate Gas Company (CIG), tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The new tariff sheets are filed in accordance with the November 2, 1994 letter order in this proceeding. In the November 2, order, the Commission conditioned acceptance of CIG's October 3, 1994 filing on a compliance filing by CIG to reflect the tariff modifications approved by the Commission in its September 14, 1994 order in Docket No. RP94–342 (68 FERC (CCH) ¶61,295). CIG has filed revisions of the tariff sheets listed in Appendix A of the order in connection with this directive with one exception. Second Revised Sheet No. 101 in CIG's October 3 filing already reflected the modifications approved by the Commission in Docket No. RP94–342.

The compliance filing also abides by the Commission directive in the November 2 order in connection with the provision allowing CIG to permit (on a case-by-case basis) storage customers under Rate Schedules NNT–1, NNT–2 and FS–1 to exceed the limitation on end-of-season gas inventory. The revised tariff sheets indicate that CIG will grant waivers on a non-discriminatory basis.

Accordingly, CIG submitted for filing the following tariff sheets to become effective on November 1, 1994:

Substitute Second Revised Sheet No. 34
Substitute Second Revised Sheet No. 56
Substitute First Revised Sheet No. 84
Substitute Second Revised Sheet No. 112
Substitute Second Revised Sheet No. 126
Substitute First Revised Sheet No. 145
Substitute Second Revised Sheet No. 159
Substitute Second Revised Sheet No. 228

CIG states that a copy of this filing was served upon all parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 22, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28620 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES95–10–000]

MDU Resources Group, Inc., Notice of Application

November 15, 1994.

Take notice that on November 9, 1994, MDU Resources Group Inc., filed an application under Section 204 of the Federal Power Act seeking authorization to issue up to $50 million of short-term indebtedness through December 31, 1996, with a final maturity date no later than December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28664 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–405–001]

Mississippi River Transmission Corp.; Notice of Proposed Change in FERC Gas Tariff

November 15, 1994.

Take notice that on November 7, 1994, Mississippi River Transmission Corporation (MRT) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below:

	Proposed effective date
Substitute First Revised Sheet No. 190.	August 1, 1994.
Second Revise Sheet No. 193.	August 1, 1994.
Second Revise Sheet No. 194.	August 1, 1994.

MRT states that the purpose of the filing is to comply with Ordering Paragraph (C) of the Commission's October 21, 1994 order by modifying the tariff language contained in Section 16.2(b) and incorporating the annual report requirements in Section 16.2(f) of its tariff.

MRT states that a copy of the filing has been mailed to all of its former jurisdictional sales customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 21, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28621 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11367–001]

Peak Power Corp., Kvaerner Venture, Inc., and Las Vegas Energy Storage Limited Partnership; Revised Notice to Conduct Scoping Meetings and a Site Visit

November 15, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application to construct and operate the proposed Sheep Mountain Pumped Storage Project, FERC Project No. 11367. The off-stream project would be located approximately 19 miles south of Las Vegas in Clark County, Nevada. This proposed project would involve federal lands managed by the Bureau of Land Management (BLM).

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the FERC staff intends to direct a third-party contractor in the preparation of an Environmental Impact Statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190. 42 U.S.C. 4321–4347, January 1, 1970, as amended by Pub. L. 94–52, July 3, 1975, Pub. L. 94–83, August 9, 1925, and Pub. L. 97–258, § 4(b), September 13, 1982). This EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis. BLM will be a cooperating agency on the EIS.

The Draft EIS (DEIS) will be circulated for review and comment by all interested parties, and FERC will hold a public meeting for the DEIS. FERC and BLM will consider and respond to comments received on the DEIS in the Final EIS. The FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision. BLM will use the information in the EIS to make its decision on issuing a right-of-way grant for the project.

Scoping: Affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the environmental issues that should be analyzed in the EIS. Scoping will help ensure that all significant issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

The FERC will conduct two scoping meetings on November 29 and 30, 1994. A scoping meeting oriented towards the public will begin at 7:30 p.m. on November 29, 1994, at the Clark County Library located at 1401 E. Flamingo Road, Las Vegas, Nevada. A scoping meeting oriented towards the agencies will begin at 8:30 a.m. on November 30, 1994, at the BLM offices located at 4765 Vegas Drive, Las Vegas, Nevada. (The public and the agencies may attend either or both meetings, however.)

Objectives: At the scoping meetings FERC staff will (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staffs' preliminary views.

Procedures: The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the official record of the Commission proceedings for the Blue Diamond South Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

To help focus discussions at the scoping meeting, FERC will mail a Scoping Document I, outlining subject areas to be addressed in the EIS, to agencies and interested individuals on the project mailing list. Copies of the scoping document will also be available at the scoping meetings.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written, scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

Washington, DC 20426 until December 27, 1994. All written correspondence should clearly show the following caption on the first page: Sheep Mountain Pumped Storage Project, FERC No. 11367–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit: A site visit to the Sheep Mountain Project is planned for November 29, 1994. Attendees will meet at the parking lot of the Gold Strike Casino, located in Jean, Nevada (east side of route 15) at 9 a.m. Those who wish to attend should contact Mike Strzelecki at (202) 219–2827.

For Further Information Contact: Mike Strzelecki, FERC–OHL, (202) 219–2827 or Roy Lee, BLM Las Vegas Resources Area, (702) 647–5040.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28663 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–38–000]

South Georgia Natural Gas Co.; Notice of One-Year Status Report

November 15, 1994.

Take notice that on November 8, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing a one-year status report as required by the Commission's August 23, 1993 order in Dockets Nos. RS92–49, et al. South Georgia states that the filing reports on (1) South Georgia's progress in implementing intraday nominations, and (2) the operation of its penalty waiver provision during the first year of operations.

South Georgia states that on November 8, 1994, it also made a transportation tariff filing in a separate docket which would implement intra-day nomination procedures effective December 5, 1994. South Georgia's report also discusses the systemwide penalty waivers granted during its first year and concludes that the waiver provision operated effectively to avoid penalizing shippers who were trying to take appropriate actions, but incurred penalties as a result of late information.

South Georgia states that copies of the filing will be served on parties to Docket Nos. RS92–49, et al., and all shippers and interested states commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 6, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28618 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–37–000]

South Georgia Natural Gas Co.; Notice of Proposed Changes to FERC Gas Tariff

November 15, 1994.

Take notice that on November 8, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 5, 1994:

First Revised Sheet Nos. 14–17
Second Revised Sheet No. 32
First Revised Sheet Nos. 33–35
Second Revised Sheet No. 77
First Revised Sheet No. 79
First Revised Sheet No. 114
First Revised Sheet No. 124

South Georgia states that the purpose of this filing is to (1) revise the nomination procedures in its transportation tariff to implement midday nomination procedures, (2) allow a shipper releasing firm transportation capacity to choose to aggregate small volume bids for purposes of determining the best bid for its capacity, and (3) allow prearranged capacity releases for the maximum rate, volume and term to be processed in one business day, regardless of the term of the release. South Georgia has requested any waivers necessary to make these sheets become effective December 5, 1994.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 21, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28619 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–55–003]

Trailblazer Pipeline Co.; Notice of Compliance Filing

November 15, 1994.

Take notice that on November 9, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets to be effective August 1, 1994 and October 1, 1994.

Trailblazer states that the tariff sheets were submitted in compliance with the Federal Energy Regulatory Commission's (Commission) order issued October 31, 1994, approving the Stipulation and Agreement (Settlement) at Docket No. RP93–55–002. The tariff sheets set out the settlement base rates and certain other tariff provisions reflected in Trailblazer's Settlement.

Trailblazer respectfully requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 1, 1994 and October 1, 1994.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP93–55–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 21,

1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28622 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–137–019]

Williston Basin Interstate Pipeline Co.; Notice of Refund Report

November 15, 1994.

Take notice that on November 2, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), filed under protest its refund Report made in compliance with Ordering Paragraph (C) of the Commission's Order issued on September 19, 1994 in the above referenced dockets.

Williston Basin stated that on October 19, 1994, a total refund of $11,515.95 was sent to Western Gas Resources, Inc. (Western) for the take-or-pay volumetric surcharge amounts previously collected through transportation rates charged for the gas placed in storage in accordance with a Rate Schedule S–2 Service Agreement between Williston Basin and Western. It is further stated, that this refund, for the period November 1, 1990 through October 19, 1994, also included interest pursuant to § 154.67(c) of the Commission's Regulations.

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 protests should be filed on or before November 21, 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 the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28624 Filed 11–18–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–89–NG]

Gaz Metropolitain and Co., Limited Partnership; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Gaz Metropolitain and Company, Limited Partnership blanket authorization to import up to 6 Bcf of natural gas from Canada. This authorization to import natural gas is for a period of two years beginning on the date of the initial delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 31, 1994.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28685 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–83–NG]

MGI Supply Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting MGI Supply Ltd. authorization to import and export a combined total of up to 657 Bcf of natural gas from and to Canada and Mexico. The term of this authorization is for a period of two years beginning on the date of first import or export after October 31, 1994.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28688 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–85–NG]

The Montana Power Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Montana Power Company (MPC) authorization to import up to 10 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after February 6, 1995.

MPC's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28686 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–80–NG]

North Canadian Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting North Canadian Marketing Corporation (NCM) authorization to import from Canada up to 146 Bcf of natural gas and to export to Canada up to 40 Bcf of natural gas. The term of the authorization is for a period of two years, beginning on the date of first import or export after December 31, 1994.

NCM's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence

Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28689 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–84–NG]

Western Gas Services (America) Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, and Vacating Authorizations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Western Gas Services (America) Inc., (WGSI-America) blanket authorization to import up to 1,000 Bcf and to export up to 1,000 Bcf of natural gas from and to Canada and Mexico. This authorization is for a period of two years beginning on the date of the initial import or export, whichever occurs first. The order also vacates two previous authorizations to import and export natural gas from and to Canada granted to WGSI-America's predecessor, Canadian Hydrocarbons Marketing (U.S.) Inc.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on November 1, 1994.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28687 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Final Provo River Project Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Final Provo River Project Marketing Plan.

SUMMARY: In December 1993, Western Area Power Administration (Western) proposed to change the way it markets power and energy produced by the Provo River Project (PRP) and to include PRP as one of the Salt Lake City Area/Integrated Projects (Integrated Projects). During the comment period on the proposal, comments were received which indicated that customers of Western's Integrated Projects would not support inclusion of the PRP in the Integrated Projects. Subsequently, on July 11, 1994, Western announced its intent to modify its original proposal and market this power and energy independent of the Integrated Projects. Western has determined that capacity and energy produced by the PRP will be allocated to those members of Intermountain Consumers Power Association (ICPA) and Utah Municipal Power Agency (UMPA) located in Utah and Wasatch Counties in Utah. ICPA and UMPA are hereinafter referred to as the Contractors. Power will be allocated to the Contractors proportional to their load. Separate power sales contracts will be offered to each of the Contractors. The term of the contracts will extend until September 30, 2008. Contractors will pay all of the annual powerplant expenses of the PRP including an amount to assist the Provo River Water Users Association (Water Users) repayment of the United States original investment in the PRP. In return, the Contractors will receive all of the marketable output of the PRP. Service to the Contractor's will begin upon execution of the electric service contracts.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth G. Maxey, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5497 or

Mr. Edmond Chang, Assistant Area Manager for Power Marketing, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

SUPPLEMENTARY INFORMATION:

Background. In a **Federal Register** notice dated December 13, 1993 (58 FR 65180–65189), Western proposed to include the PRP with the Integrated Projects and to market the power and energy produced by the PRP to members of ICPA and UMPA within a marketing area comprised of Utah and Wasatch Counties, Utah. Western accepted comments on its proposal until January 12, 1994. A public information/comment/scoping meeting was held in Spanish Fork, Utah, on January 4, 1994. As a result of comments received, at both the meeting and in writing, Western revised its proposed marketing plan for the PRP in a **Federal Register** notice dated July 11, 1994 (59 FR 35334–35337). Western accepted comments on its revised proposal until August 10, 1994. Based on the response, Western has decided that the proposal shall become effective upon execution of the electric service contracts.

Marketing Issues. Comments on Western's revised proposal were received from six commentors. These included UMPA, ICPA, Colorado River Energy Distributors Association (CREDA), the Bureau of Reclamation (Reclamation), the Water Users, and the Central Utah Water Conservancy District (CUWCD). Commentors were supportive of Western's revised proposal. The following addresses the issues that were identified and explains how they were resolved.

I. Issue: Inclusion of the PRP in the Integrated Projects.

Discussion: This issue had been included in the original proposal but was objected to by CREDA because the payment of power revenues to assist the Water Users repayment obligation would help repay investment in municipal and industrial water. In response to this objection, Western revised its proposal to market the PRP independently from the Integrated Projects. UMPA, ICPA, and CREDA commented that they support Western marketing the PRP independent from the Integrated Projects.

Decision: Western will market the output of the PRP through contractual arrangements separate from the Integrated Projects.

II. Issue: Marketing area for the PRP.

Discussion: Western proposed to define the marketing area for the PRP as Utah and Wasatch Counties in Utah, essentially the drainage of the Provo River. Two entities, Weber Basin Water Conservancy District (Weber Basin) and the city of Bountiful (Bountiful), Utah, claimed that since water was diverted from the Weber River into the Provo River above powerplants that were controlled by them, they were entitled to an allocation of energy from the PRP to compensate them for energy lost because of this diversion. Western, through Reclamation, was able to demonstrate that water rights for the Provo River diversion predated water rights held by Weber Basin and Bountiful for generation. Neither Weber Basin nor Bountiful commented on the revised proposal. In responding to the revised proposal, ICPA was the only entity to comment on this issue. ICPA supported establishing the Provo River

Drainage as the marketing area for the PRP.

Decision: PRP power will be marketed within Wasatch and Utah Counties, Utah.

III. Issue: Marketing the output of the Deer Creek Powerplant to preference entities located in the marketing area.

Discussion: Marketing of the PRP production to preference entities in the marketing area was supported by the commentors. All of these entities are members of either ICPA or UMPA, organizations established as purchasing agents for Federal power. Heber City, Lehi, Springville, Strawberry Electric Service District, and Payson are members of ICPA. Provo, Salem, and Spanish Fork are members of UMPA.

Decision: Western will offer firm power sales contracts to ICPA and UMPA to purchase PRP power and energy in behalf of their members in the marketing area.

IV. Issue: Relationship of ICPA and UMPA to their members concerning the allocation of PRP power.

Discussion: In its comments, UMPA requested that language be included in its power sales contract which would clarify the relationship of UMPA and its members concerning the allocation of PRP power. If a member withdraws from either organization, the allocation of Federal power stays with the member, not UMPA or ICPA.

Decision: Western will include language in both UMPA and ICPA's contracts to clarify the relationship between the members and the organization. The language will state that if a member withdraws from either organization, the percentage entitlement of PRP power remains with the member and not with UMPA or ICPA.

V. Issue: Payment of all of the PRP's annual costs including an amount for the Water Users repayment obligation by the Contractors in return for receiving all of the marketable energy produced by the plant each year.

Discussion: Generation from Deer Creek Powerplant has varied considerably from year to year. Without the Integrated Projects to back up Deer Creek, it is very difficult to determine the amounts of firm and nonfirm energy and capacity that should be used as marketable energy in ratesetting. Basing rates on average generation could result in surplus revenues in some years, and deficits in others. The proposal which was supported by UMPA, ICPA, CUWCD, and CREDA would eliminate the need to identify a specific rate for PRP power and would still allow Contractors to take full advantage of PRP generation.

Decision: PRP power sales contracts will include provisions for Contractors to pay all of the PRP's annual operation, maintenance, and replacement (OM&R) expenses as well as an annual payment to Reclamation for application toward the Water Users' annual repayment obligation. In return, the Contractors will receive the total annual output of marketable energy produced by the Deer Creek Powerplant. Every year Western will prepare a power repayment study (PRS) that will identify the OM&R costs to be collected in the upcoming year.

VI. Issue: Effect of operation of Jordanelle Reservoir on Deer Creek generation.

Discussion: Jordanelle Reservoir is intended to store surplus water from high flow years and the winter flows of the Provo River and release it in dry years and in the late summer. Prior to Jordanelle, the winter flow of the Provo River was released from Deer Creek through the generators. Under the Deer Creek/Jordanelle Operating Agreement, only enough water to meet minimum stream flow requirements will be released. The result is that winter generation is greatly reduced. However, there is the potential for generation to be enhanced when the water is released during the summer months.

Reducing winter generation levels creates a problem in providing enough energy to repay PacifiCorp for its foregone generation when the Water Users are operating under the December 20, 1938, Power Contract (1938 Contract) (see discussion below under section II of Marketing Criteria). In the Deer Creek/Jordanelle Operating Agreement, the CUWCD agreed to make up any shortfalls in repaying PacifiCorp. On the other hand, CUWCD releases should augment summer generation levels. CUWCD has requested that this energy be applied toward the deficit it creates in the winter. Both Reclamation and the Water Users support this position.

Discussions have been held with the Contractors, and they have agreed that the increase in summer energy attributable to CUWCD releases should be available to offset reductions in the winter.

Decision: A separate agreement among Western, Reclamation, CUWCD, PacifiCorp, the Water Users, and the Contractors will be developed which will provide for the increase in summer energy to offset deficits in winter generation. Negotiations are continuing on the methodology used to verify the impact to generation and on the best method to deliver the energy to PacifiCorp.

VII. Issue: Application of net power revenues from the Contractors toward the obligation of the Water Users to repay the Federal Government for its investment in the PRP.

Discussion: Several commentors, including UMPA, ICPA, Reclamation, and the Water Users, commented on this issue. Both the Water Users and Reclamation support the claim that there is a contractual obligation for this payment and document the level of annual payments as $102,243.80 through 2008, and $76,520 thereafter until the obligation is liquidated. UMPA stated that it supports the level of the annual payments. ICPA stated that it supports the payment through 2008 but objected to the payment beyond that date. However, the Water Users and Reclamation have demonstrated that the contractual obligation extends until the Water Users' repayment obligation is liquidated. Reclamation has documented that the net revenues available to the Water Users beyond 2008 should be $76,520 annually.

Decision: Include provisions in the power sales contracts which would pay $102,243.80 through 2008 toward the Water Users' repayment obligation. Any contracts for the sale of power thereafter would include annual assistance payments of $76,520 until the obligation is liquidated. After the obligation is repaid, the net revenue of $76,520 will need to be paid to Western to be disposed of as Congress directs.

VIII. Issue: Term of Contracts.

Discussion: UMPA, Reclamation, and the Water Users commented that the term of the power sales contracts should be extended long enough to ensure that the obligation to use net power revenues to assist the Water Users is completed. Reclamation stated that this should be through FY 2032 to ensure that the Water Users' contract will be paid off. Both Reclamation and the Water Users have established that there is a contractual obligation that binds the Federal Government to make surplus revenue from the sale of power available to help repay the Water Users' obligation. Also, both assert that commitments were made by Reclamation that this amount should be $76,520 per year after 2008.

Decision: Contractors will be given the option of extending the contracts at least 3 years before the contracts expire. Adjustments to contract provisions could be made at that time, including provisions for new customers. The contracts will provide for annual payments of $102,243.80 through 2008; extended contracts would include annual assistance payments of $76,520 thereafter to be made by the Contractors

to Reclamation for application to the Water Users' annual repayment obligation until the Water Users' repayment obligation is liquidated.

IX. Issue: Power revenues should not be used to subsidize the repayment of municipal and industrial water developments.

Discussion: ICPA noted that it supported the position of CREDA that power revenues should not be used to subsidize the repayment of municipal and industrial water developments. As discussed above, both Reclamation and the Water Users have demonstrated that even though a majority of the water developed by the PRP is used for municipal and industrial uses, the contracts between the Water Users and Reclamation establish a commitment for net power revenues to be used to help the Water Users meet their annual repayment requirements.

Decision: Western's contract should be consistent with the provisions of the contracts between Reclamation and the Water Users. The obligation to provide for payments to the Water Users until their repayment obligation is liquidated will be reflected in the contracts.

X. Issue: What happens in the event of a major equipment failure at the Deer Creek Powerplant?

Discussion: Reclamation commented that Western's proposal does not address what would happen in the event of a major equipment failure at the Deer Creek Powerplant, and that "the contract terms should be sufficiently flexible to address this and other significant issues." Given the age of the powerplant, it is necessary to take this into consideration.

Decision: Include language in the power sales contracts which provides that in the event extraordinary replacement costs are incurred at the Deer Creek Powerplant, the payment thereof shall take precedence over the application of net power revenues toward the Water User's repayment obligation, and may result in a reduction or deferral of such payment until the replacement costs are fully recovered. This language has been agreed to by the Water Users and is included in the Deer Creek/Jordanelle Operating Agreement.

Marketing Criteria

I. *Applicability.* Congress granted to the Secretary of Energy, acting by and through Western's Administrator, the authority to market Federal power. In response to requests from UMPA and ICPA to receive power produced by the PRP, Western has examined the merits of marketing the PRP resource. Western believes these marketing criteria will benefit the Contractors, the Water Users, Reclamation, and Western.

II. *Marketable Resource.* The 1938 Contract among Reclamation, the Water Users, the Weber River Water Users Association, and PacifiCorp provides for diversion of water from the Weber River into the Provo River for storage in Deer Creek Reservoir and for use by the Water Users. Because PacifiCorp operated generating units on the Weber River below the point of diversion to the Provo River, PacifiCorp's ability to generate was reduced when water was diverted. The 1938 Contract provides for PacifiCorp to receive all of the electrical generation of the PRP during the period of time that water is diverted. This means that for up to 6 months, from October 15 to April 15 of each year, there may be no marketable energy generated by the PRP. Historically, however, marketable energy has averaged 23,000,000 kilowatthours (kWh), with 15,000,000 kWh generated during summer months, and the remaining 8,000,000 kWh from winter surplus energy. Typically, about 3,000,000 kWh are available in each of the three peak summer months of June, July, and August; approximately 1,000,000 kWh are available in April, 2,500,000 kWh in May, and another 2,500,000 kWh in September.

III. *Establishment of Rate Methodology.* Western, through a separate public process, will establish a rate methodology for the PRP. Western will prepare an annual PRS which will identify the anticipated OM&R expenses. Minor replacements and additions shall be included in the annual OM&R expenses. However, if major replacements or additions which cost more than $5,000 are needed, the Contractors will be given the option of financing their individual share of the cost or of having the cost capitalized at the Department of Energy's current interest rate and amortized over the life of the replacement or addition. Rather than set a specific rate for power and energy, the Contractors will pay the PRP's total annual powerplant expenses in return for the total marketable PRP production. Each will pay its proportional share of the OM&R expenses identified in the PRS in 12 monthly installments. In addition to the annual OM&R expenses, before January 1 of each year, each Contractor will pay its share of net power revenues to Reclamation to be applied toward the Water Users' annual payment. Through 2008, the total annual payment will be $102,243.80. Thereafter, until the Water Users' obligation is liquidated, the total annual payment will be $76,520. After the Water Users' repayment obligation is liquidated, the annual payment of $76,520 will continue to be paid to Western to be disposed of as Congress directs.

IV. *Marketing Area.* Because of the size of the resource, Western has limited marketing of this resource to preference entities within the drainage area of the Provo River. All of the eligible utilities are members of ICPA and UMPA and are located in Utah and Wasatch Counties, Utah. The cities of Heber City, Lehi, Payson, Springville, and the Strawberry Electric Service District (Strawberry) are members of ICPA. The cities of Provo, Salem, and Spanish Fork are members of UMPA. It is anticipated that marketing of the PRP resource to these Contractors would assure that each would receive a beneficial amount of power.

V. *Class of Service.* PRP generation is dependant upon water releases that are dictated by minimum stream flow requirements and the Water Users' needs. No load following ability exists. Since April 1, 1994, the PRP has been included in Western's Upper Colorado/Missouri Basin control area. With the PRP in Western's control area, Western is able to enhance the usability of the product and to allow it to be scheduled, even though it has no control over PRP generation. Western provides control area and regulating services for several other customers and has a developed methodology to share the expenses of operating a control area and providing for regulating capacity. The PRP will be required to pay for its share of these services. These costs will be included in the PRS as an operating expense.

Energy will be scheduled to the Contractors in megawatts in accordance with anticipated generation levels from the PRP. When variations occur, the hourly schedules will be adjusted to reflect actual operation.

Western will maintain an energy deviation account between the PRP and the Integrated Projects. At the end of each year, an accounting of scheduled and generated energy will be made. Differences between the two projects will be made up by adding to or subtracting from the following year's schedules to the Contractors. The Contractors will be responsible for reserves in accordance with Inland Power Pool requirements.

VI. *Resource Allocation.* Western will allocate PRP resources in proportion to the historical sales of each of the ICPA and UMPA members. UMPA members serve approximately 70 percent of the load in the marketing area, while ICPA members serve approximately 30 percent. Proportional allocation of the PRP's average annual output of

23,000,000 kWh would mean UMPA members could expect an average of 16,100,000 kWh and 3,500 kilowatts (kW) of contingent capacity, and ICPA members could expect an average of 6,900,000 kWh and 1,500 kW of contingent capacity.

The following table shows the percentage entitlement of ICPA and UMPA and each of their members.

PERCENTAGE ENTITLEMENT OF ICPA AND UMPA AND THEIR MEMBERS

	Entity	Percentage entitlement
ICPA Total	.....	30.0
	Heber City	6.0
	Lehi	2.7
	Springville	12.9
	Payson	4.8
	Strawberry	3.6
UMPA Total	.....	70.0
	Provo	60.9
	Salem	1.4
	Spanish Fork	7.7

Western will offer firm power sales contracts to ICPA and UMPA on behalf of their members which specify the terms and conditions of receiving PRP power. The power sales contracts will be structured so that if a member withdraws from either ICPA or UMPA, the member retains its entitlement of PRP power.

VII. *Term of Contract.* The power sales contracts will become effective upon execution and shall terminate on September 30, 2008.

ENVIRONMENTAL COMPLIANCE: Western has complied with the National Environmental Policy Act of 1969 through preparation of an environmental assessment on the impacts of the proposed marketing changes and has issued a Finding of No Significant Impact on November 8, 1994.

REGULATORY FLEXIBILITY ANALYSIS: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when publishing a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact to such entities.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued in Golden, Colorado, November 8, 1994.

J.M. Shafer,

Administrator.

[FR Doc. 94–28684 Filed 11–18–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400090; FRL–4918–7]

Notice of Availability of Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Pollution Prevention Grants.

SUMMARY: EPA is announcing the availability of approximately $5 million in fiscal year 1995 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The purpose of this program is to support State, Tribal, and regional programs that address the reduction or elimination of pollution across all environmental media: Air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. Contact names for each Regional Office are listed under unit IV. of this preamble.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately $30 million has been awarded to over 100 State, Tribal, and regional organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices, that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State programs will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Act authorizes EPA to establish a national source reduction clearinghouse, expands EPA's authority to collect data to better track source reduction activities, and requires EPA to report periodically to Congress on EPA's progress in implementing the Act.

II. Availability of FY 95 Funds

With this publication, EPA is announcing the availability of approximately $5 million in grant/cooperative agreement funds for FY 1995. The Agency has delegated grant making authority to the EPA Regional offices which formally transfers the decision-making and awarding process for the PPIS grants to the Regions. Regional offices have responsibility for the solicitation of interest, screening of proposals, and the actual selection of awards. This seventh round of awards reflects a more direct and active Regional role in determining FY '95 awardees. PPIS grant guidance will be developed separately by each Regional program and will be provided to all applicants along with any supplemental information the Regions may wish to provide. However, in addition to Regional guidelines, all applicants must address the national requirements listed under unit III.3. of this document. Interested applicants should contact

their Regional Pollution Prevention Coordinator for more information.

III. Eligibility

In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all Federally-recognized Indian tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. These organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. EPA strongly encourages this type of cooperative arrangement.

1. *The Catalogue of Federal Domestic Assistance.* The number assigned to the PPIS program is 66.708 (formerly 66.900). Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50 percent.

For example, the Federal government will provide half of the total allowable cost of the project, the State half of the total allowable cost of the project. A grant request for $100,000 would support a total allowable project cost of $200,000, with the State also providing $100,000. State contributions may include dollars, in-kind goods and services and/or third party contributions.

2. *Eligible activities.* In general, the purpose of the PPIS grant program is to support the establishment and expansion of State, Regional, Tribal, or local multimedia pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or Region-wide and where appropriate seek to address State environmental justice issues. States might focus on, for example:

a. Developing multimedia pollution prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution prevention; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement solutions, where possible.

b. Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the State or region.

c. Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

3. *Coordination of pollution prevention activities.* The Federal government has extended and broadened its support of organizations that supply technical assistance, training and information to businesses. Examples of this include:

a. Resources from the Department of Commerce's National Institute for Standards and Technology to support the Manufacturing Extension Partnerships.

b. Resources from the Small Business Administration and EPA to support the technology assistance programs of the Small Business Development Centers.

c. Resources from the Department of Energy to the industrial sector to assist in commercializing technologies developed from the national labs.

d. Resources from EPA and State programs that support the Clean Air Act Small Business Assistance Programs.

There is a growing emergence of business assistance organizations established within States to address the vast array of environmental concerns. Consequently, as a means to provide substantive support of pollution prevention, EPA is eager to ensure that the PPIS grants will add to the success and sustainability of these State pollution prevention programs. Therefore, it is important to clarify the role of the State pollution prevention program in terms of its relationship to its intended customers and to the other organizations which provide similar environmental assistance.

Based on this, EPA has developed three mandatory requirements which must be addressed by all eligible applicants. Proposals that do not address these national requirements, even though they adequately address the Regional criteria, will not be considered eligible for funding. In the narrative of the grant application, the following three requirements must be addressed:

(1) Briefly define the capacity and potential of the State program as a provider of pollution prevention assistance.

(2) Identify other organizations at the regional, State and local level, that provide similar environmental assistance.

(3) Describe the coordination capabilities with the identified environmental assistance programs:

a. Briefly describe an approach to working with, leveraging and complementing the identified organizations.

b. Address the barriers for coordination with these organizations and options to overcome the identified barriers.

Proposals accepted for review under this program must qualify as pollution prevention as defined by EPA.

4. *Program management.* Awards for FY 1995 funds will be managed through the EPA Regional Offices.

5. *Contact.* Interested applicants are requested to contact the appropriate EPA Regional Pollution Prevention Coordinator listed under unit IV. of this document to obtain specific instructions and guidance for submitting proposals.

IV. Regional Pollution Prevention Contacts

Mark Mahoney (PAS), US EPA Region 1, JFK Federal Bldg, Room 2203, Boston, MA 02203, (617) 565–1155

Janet Sapadin (2-PPIB-OPM), US EPA Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264–1925

Cathy Libertz (3ES43), US EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–0765

Carol Monell, US EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347–3555, ext. 6779

Phil Kaplan, US EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604-3590, (312) 353–4669

Rob Lawrence (6M-PP), US EPA Region 6, 1445 Ross Ave., 12th Floor, Suite 1200 Dallas, TX 75202, (214) 665–6580

Steve Wurtz, US EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7315

Sharon Riegel (8PM-SIPO), US EPA Region 8, 999 18th St., Suite 500, Denver, CO 80202-2405, (303) 293–1471

Eileen Sheehan/Bill Wilson (H1B), US EPA Region 9, 75 Hawthorne Ave., San Francisco, CA 94105, (415) 744–2190 415–744–2192.

Carolyn Gangmark, US EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101 (206) 553–4072.

Dated: November 14, 1994.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–28702 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5110–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; Announcement of Competition for Final Five Brownfield Economic Redevelopment Initiative Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will begin accepting proposals for Brownfield Economic Redevelopment Pilots beginning December 1, 1994. The application period will close March 1, 1995, and the Agency intends to competitively select five Pilots by June 1, 1995.

DATES: This action is effective as of December 1, 1994, and expires on March 1, 1995. All proposals must be received and/or post marked by the expiration date cited above.

ADDRESSES: Application booklets can be obtained by calling the Superfund Hotline at 800–424–9346, or writing to: U.S. EPA—Brownfield Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: The Brownfield Economic Redevelopment Initiative is founded on the belief that "economic development and environmental protection must go hand in hand," (Carol Browner, Administrator, Environmental Protection Agency, Announcing the Cleveland Brownfields Pilot on November 8, 1993). EPA's Brownfields Initiative is an organized commitment to help communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist. Three national pilot projects already have been awarded.

With as many as 100,000 sites potentially requiring evaluation under federal or state Superfund programs, hundreds of local, state, and tribal governments and their citizens inevitably will have to deal with contaminated properties.

The "polluter pays" principle, fundamental to Superfund's success in deterring the creation of new contaminated sites, has caused public and private investors to shy away from buying and cleaning up land which may be contaminated.

Fear of that liability drives investors toward undeveloped "greenfields." The result can be a diminished supply of pristine land and economic decline in industrial and urban centers. Both are detrimental to communities.

EPA's Brownfields Pilots (to be funded at $200,000 each over two years) will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated efforts at the federal, state, and local levels. EPA will develop a coordinated federal strategy to help initiate a significant national effort to clean up and redevelop brownfields.

The objectives of the initiative are: to build the capacity of affected and interested parties to shape how contaminated sites are cleaned up and productively reused; to stimulate a national search for innovative ways to overcome the current obstacles to the reuse of contaminated properties; and to coalesce federal, state, and municipal efforts to examine new approaches to achieving cleanup and reuse; and to explore the potential for combining an economic stimulus and a speeded-up environmental cleanup to contribute to achieving environmental justice.

Cities, counties, towns, states, and Native American tribes are all eligible to apply.

Proposals will be evaluated on the following Criteria (a more detailed and complete set of criteria will be included in the application booklet):

- Demonstrated commitment of public and private leadership to brownfields redevelopment.
- Plans for effective community involvement.
- Clear delineation of how federal support will make a difference.
- Potential for national replication.
- Government support and technical, legal, and political capacity to complete goals.
- Clearly outlined potential sources of cleanup funding.
- Contributions to environmental justice goals.
- Well-defined approach to environmental assessment.

Dated: November 15, 1994.

Timothy Fields, Jr.,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–28706 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5110–7]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a special meeting of the Ozone Transport Commission to be held on November 30, 1994.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on November 30, 1995 from 1:00 p.m. to 5:00 p.m.

PLACE: The meeting will be held at: The Grand Hyatt, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: *EPA:* Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383.

THE STATE CONTACT: *Host Agency:* Ferial Bishop, D.C. Environmental Regulation Administration, 2100 Martin Luther King Jr. Avenue, SE., Washington, DC 20020, (202) 645–6617.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, NW., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first

meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on November 30, 1994. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 on Monday, November 21, 1994. The purpose of this special meeting is to elect a new Vice Chair of the Commission, receive reports from its committees and to discuss issues relating to the November 15, 1994 State Implementation Plan revisions.

Dated: November 8, 1994.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 94–28716 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–P

[PF–615; FRL–4921–1]

General Mills; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from General Mills a petition to establish a time-limited pesticide tolerance for chlorpyrifos on oats.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.2

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM-19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6386.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from General Mills, P.O. Box 1113, Minneapolis, MN 55440, a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 5F4427 to amend 40 CFR 180.342 to establish a time-limited tolerance, expiring December 31, 1996, for residues of chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) at 15 ppm in or on the raw agricultural commodity oats treated with chlorpyrifos before June 15, 1994. The tolerance applies only to oats to be used as animal feed or as a constituent of animal feed, and does not authorize the presence of residues of chlorpyrifos in any human food item made from such treated oats, other than residues resulting from the use of the oats for animal feed purposes. (PM-19)

List of Subjects

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

Authority: 21 U.S.C. 346a and 348.

Dated: November 7, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–28705 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66203; FRL–4915–2]

Accufilter International, Inc.; Notice and Order of Revocation of Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Notice and Order of Revocation of Registrations and Final Determination Governing Sale and Use of Existing Stocks.

SUMMARY: On November 6, 1992, EPA issued registrations for Accufilter Straw, EPA Registration Number 64906-1, and Accufilter Sport Bottle, EPA Registration Number 64906-2. These silver-activated carbon filters are intended to remove the taste of chlorine and other sources of bad taste, odor, and color from drinking water. These registrations were based, in part, on receipt and review of water samples analyzed for silver content. EPA has subsequently determined that the registrant did not report the actual silver content in those water samples, but instead submitted false information showing the silver values to be lower than those actually obtained by the laboratory that conducted the sampling. Registrations obtained through the submission of false data are invalid for any purpose. By this notice, EPA announces and orders the revocation of registrations 64906-1 and 64906-2. As a result of these revocations, the sale, distribution, or use of existing stocks of these water filters after November 21, 1994 would be unlawful.

EFFECTIVE DATE: November 21, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-5446.

SUPPLEMENTARY INFORMATION: On November 6, 1992, EPA issued registrations to Accuventure, Inc., Beaverton, OR, for the drinking water filters Accufilter Straw, EPA Registration Number 64906-1, and Accufilter Sport Bottle, EPA Registration Number 64906-2. The company name was subsequently changed to Accufilter International, Inc., at the Beaverton, OR, address.

These registrations were for drinking water filters in which silver was impregnated on activated carbon. The filters are intended to remove sources of odors and taste from drinking water. Silver is an element, and a secondary standard for silver in drinking water has been established. Under provisions of the Safe Drinking Water Act, a secondary standard for a drinking water contaminant is not enforceble; rather, it is established for aesthetic purposes. Exposure to silver can cause argyria, a discoloration of skin or other tissues, which is usually permanent. Although not a toxic response, it is an undesirable cosmetic change.

The registration applications for these filters include analyses of water samples from tests utilizing these filters. The

testing was intended to reflect actual use conditions and included sufficient flushing of the filters to represent use over varying portions of the filter's useful life (new filters, 10%, 60%, 95% of filter life). Twenty four (24) sample analyses were reported from the laboratory. EPA has learned that in the testing performed by the laboratory and reported to the registrant, 14 samples were at or exceeded 0.05 milligram/liter (mg/L) of silver in drinking water. At the time of registration (1992) the secondary drinking water standard (maximum contaminant level) for silver was 0.05 mg/L. (This standard has subsequently been increased to 0.1 mg/L). When this report was forwarded to EPA in support of the registration applications, all 14 values had been reduced below the standard. The original data suggest that some of the filters may leak silver, that higher levels of silver than reported occur in drinking water as a consequence of use of the filters, and that quality control of the filters may be inadequate.

This Notice has two parts: Part I describes the basis for the revocation of registrations for Accufilter Straw and Accufilter Sport Bottle; Part II describes the procedures which will be followed in implementing the regulatory actions set forth in this notice, including the treatment of existing stocks.

I. Basis For Revocation

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 135 et. seq., does not prescribe procedures to be used to revoke a registration that has been obtained through a willful act of misrepresenting data submitted in support of registration. In the absence of such procedures, the termination of a license such as a pesticide registration is governed by section 558 of the Administrative Procedure Act (APA), 5 U.S.C. 558. Section 558 states:

> Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefore, the licensee has been given—
>
> (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
>
> (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

Courts have interpreted willfulness to mean "an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof." *Hutto Stockyard, Inc.* v. *USDA* (903 F.2d 299, 304 (4th Cir. 1990) (quoting *Capitol Packing* v. *United States*, 350 F.2d 67, 78-79 (10th Cir. 1965); *Capital Produce Co.* v. *United States*, 930 F.2d 1077, 1079 (4th Cir. 1991). To establish willfulness, one need only show that an act or failure to act was intentional, as opposed to accidental, and proof of an evil motive is unnecessary. *Emil Lawrence* v. *Commodity Futures Trading Commission*, 759 F.2d 767, 769 (9th Cir. 1985).

In this case, the registrant submitted data which were changed from the original, and did not reflect true results of the analyses of the samples. The altered results suggested lower silver content in the drinking water than actually occurred as a consequence of use of the filters. This was an intentional act, not an accidental one; therefore, it falls squarely within the definition of "willful." Because the registrations were obtained through misrepresentation and a willful violation of the provisions of FIFRA, the registrations were not valid when granted and section 558 does not require that EPA provide notice to the registrant or an opportunity to demonstrate or achieve compliance prior to revocation of the registration.

Although not required in this case, the Agency did provide the registrant written notice as well as an opportunity to respond to the allegations against him. The registrant has responded that he did not alter the data, but has not provided evidence to support his contention. These procedures go beyond what is required by the APA in cases of willful violations of law.

II. Order

This notice announces EPA's decision and order revoking registrations for Accufilter Straw and Accufilter Sport Bottle. As a consequence of this revocation, the sale, distribution, or use of any existing stocks of either filter in the United States is unlawful. Existing stocks are those currently in the United States and which have been packaged, labeled, released for shipment, and/or distributed to dealers, retailers, or other sellers.

List of Subjects

Environmental protection, Administrative practice and procedures, Agricultural commodities, Drinking water, Pesticides and pests, Records and recordkeeping.

Dated: November 8, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–28703 Filed 11–18–94; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5110–1]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed Prospective Purchaser Agreement ("Agreement") associated with the Commodore Semiconductor Group Superfund Site (the "Site") in Norristown, Lower Providence Township, Montgomery County, Pennsylvania, was executed by the Environmental Protection Agency ("Agency") on Nov. 14, 1994 and is subject to final approval or disapproval by the United States Attorney General or her designee. The Prospective Purchaser Agreement would resolve certain potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against GMT Microelectronics, Inc. ("Purchaser"). The Agreement provides that in exchange for a limited Covenant Not to Sue which relates only to existing contamination at the Site, and contribution protection, the Purchaser will provide the Agency with a "substantial benefit" which consists of the following: (1) Payment of EPA's response costs at the Site incurred prior to the effective date of the Agreement (approximately six-hundred and twenty-five thousand dollars ($625,000)); (2) Payment of approximately three-hundred and seventy-five thousand dollars ($375,000) into an Escrow fund established pursuant to an Escrow Agreement signed by the Purchaser and EPA, to be used to pay response costs incurred by EPA or any private party conducting response work at the Site pursuant to a Consent Decree or Unilateral Administrative Order signed by EPA, after the effective date of this Agreement ("Lump Sum Future Response Cost Payment"); (3) Payments of up to thirty-five thousand dollars annually for Remedial Action Oversight Costs, to be paid to the "EPA Hazardous Substance Response Superfund;" (4) Payments of up to sixty-five thousand

dollars ($65,000) annually for response costs incurred at the Site. This money will be paid into the Escrow fund, and disbursed in a manner similar to the Lump Sum Future Response Cost Payment. The Purchaser also agrees to provide EPA and its authorized representatives with unrestricted access to the Site, and not to interfere with remedial activities at the Site.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before December 21, 1994.

ADDRESSES: The proposed Agreement and additional background information relating to the Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Commodore Semiconductor Group Superfund Site" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Sarah Keating, Esquire (3RC33), Assistant Regional Counsel (Region III), U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107 (215) 597–0814.

Dated: November 8, 1994.

Stanley Laskowski,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 94–28712 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5110–6]

Notice of Proposed Administrative De Minimis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Niagara County Refuse Superfund Site, Niagara County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Niagara County Refuse Superfund Site ("Site"). The Site is located in the Town of Wheatfield and City of North Tonawanda, Niagara County, New York and is on the National Priorities List established under Section 105 of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate.

The proposed *de minimis* settlement will be memorialized in an Administrative Order on Consent ("Order") between EPA and eleven settling parties ("Respondents"). Under the Order, the Respondents will be obligated to pay an aggregate of $793,866 to the Hazardous Substances Superfund. The amount required to be paid by each settling party represents the share attributable to such Respondent of projected total response costs at the Site, based upon the Respondent's estimated volumetric contribution, plus a premium to account for the potential of cost overruns, the potential of failure of the selected remedy and other risks.

Pursuant to CERCLA Section 122(g)(4), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

EPA intends to settle with other potentially responsible parties concerning the performance of the remedy selected for the Site and concerning payment of additional amounts to EPA in respect of past costs.

DATES: Comments must be submitted on or before December 21, 1994.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, Room 437, 26 Federal Plaza, New York City, New York 10278 and should refer to: "Niagara County Refuse Superfund Site, U.S. EPA Index No. II CERCLA–94–0213". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 437, New York, New York 10278, Telephone: (212) 264–3348.

Dated: November 7, 1994.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 94–28707 Filed 11–18–94; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs to the United States Congress.

TIME AND PLACE: Tuesday, December 6, 1994, from 9:30 a.m. to 12 noon. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Comments on Lundine/Key Linkages Report; Roundtable Discussion—"Environmental Business Development", and "Environmental Procedures"; and Other Topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957, not later than December 5, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 29, 1994, Barbara Lane, Room 1112, 811 Vermont Avenue, NW., Washington, DC 20571,

Voice: (202) 565–3957 or TDD: (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957.

Carol F. Lee,

General Counsel.

[FR Doc. 94–28792 Filed 11–18–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before January 20, 1995.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Donald Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0138.

Title: State Administration Plan.

Abstract: The requirements for the State Administrative Plan are established by section 613 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. FEMA's implementing regulation is 44 CFR Part 302.3. The plan is a formal description of each participating State's emergency preparedness program and related State and local laws, executive directives, rules, plans, and procedures. It includes documentation on administrative and financial systems to assure compliance with uniform administrative requirements for grants and cooperative agreements to States and their subgrantees.

The plan is a one-time submission with annual updates to keep it current. Plans and updates are submitted to the FEMA Regional Offices along with the annual applications for funding under emergency management programs. FEMA uses the information to determine whether a State legally qualifies for Emergency Management Assistance matching funds.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 2,240 hours.

Number of Respondents: 56.

Estimated Average Burden Time Per Response: Plans and updates—20 hours; recordkeeping—20 hours.

Frequency of Response: On occasion.

Dated: November 14, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–28666 Filed 11–18–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1041–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

Jefferson County for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–28667 Filed 11–18–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

National Bank of Canada; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Bank of Canada, Montreal, Quebec, Canada; to engage through its subsidiary Natbank, F.S.B., Pompano Beach, Florida, in operating a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y, Natbank, F.S.B., is a *de novo* institution.

Board of Governors of the Federal Reserve System, November 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28680 Filed 11-18-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Aging; Federal Council on the Aging; Notice of Meeting

Agency Holding the Meeting: Federal Council on the Aging (FCoA).

Time and Date: Meeting begins at 9 a.m. and ends at 5 p.m. on Thursday, December 8, 1994, and begins again at 9 a.m. and ends at 5 p.m. on Friday, December 9, 1994.

Place: On Thursday, December 8, the meeting will be held in the Department of Health and Human Services Office of the Inspector General (OIG) Conference, Room 5542 (fifth floor), of the Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW, Washington, D.C. 20201. On Friday, December 9, the meeting will be held in the Stonehenge Conference Room 615–F (sixth floor) of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Meeting is open to the public. (Due to building security, the names of attendees should be called into the FCoA office prior to the meeting dates).

Contact Person: Brian Lutz, room 4657, Wilbur Cohen Federal Building, 330 Independence Avenue, SW, Washington, D.C. 20201, PH: (202) 619–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Public Law 93–29; 42 U.S.C. 3015) for the purpose of advising the President on matters related to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. app. 1, section 10, 1976) that the Council will hold a quarterly meeting on December 8 from 9 a.m. to 5 p.m. in room 5542 of the Wilbur Cohen Federal Building, 330 Independence Ave., SW, Washington, D.C. 20201, and on December 9 from 9 a.m. to 5 p.m. in room 615–F of the Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Agenda

The Council's activities will focus on the strategic plan and issue priorities for fiscal year 1995 which were adopted at the last quarterly meeting, including the development of informational material and policy recommendations pertaining to:

(1) Mental health and aging;

(2) Health care and long-term care;

(3) The Older Americans Act; and

(4) Pre- and post-activities related to the 1995 White House Conference on Aging.

On December 8, from 9 a.m. to 12:30 p.m., deliberations will be held on the Council's regular business, including an update of activities by the Chairman, Council members, and the executive director. These deliberations will include the development of three specific projects sponsored by the Council related to mental health and aging: (1) A book being done in conjunction with the National Institutes of Mental Health on the special mental health needs and characteristics of older persons; (2) an issue brief of policy recommendations regarding mental health and aging; and (3) preparations for the Council's participation in a White House Conference on Aging Mini-Conference on Mental Health to be held in February, 1995.

On December 8, from 1:30 p.m. to 5:00 p.m., the Council will consider issues related to health care and long-term care. Representatives from the Congressional Budget Office and the General Accounting Office have been invited to provide an overview of the costs related to the range of health care proposals being considered by the Congress at the close of the 103rd Congress.

On December 9, from 9 a.m. to 12:30 p.m., the Council will discuss issues related to the reauthorization of the Older Americans Act. Representatives from the U.S. Administration on Aging, the National Association of Area Agencies on Aging, and the National Association of State Units on Aging have been invited to provide a preliminary overview of key issues and programs under the Act.

On December 9, from 1:30 p.m. to 5:00 p.m., the Council will discuss issues in preparation for the 1995 White House Conference on Aging. These deliberations will include an update of the Council members' participation in many pre-conference and mini-conference activities throughout the country, the planned leadership role of the Council at the Conference, and the discussion of a strategy for working to follow through on priority recommendations arising from the Conference.

Dated: November 14, 1994.

Brian T. Lutz,

Executive Director.

[FR Doc. 94-28671 Filed 11-18-94; 8:45 am]

BILLING CODE 4130-01-M

Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the Federal Register.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

The Following persons will serve on the Performance Reviw Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

William D. Adams
Philip Amoruso
Kenneth S. Apfel
Michele Applegate
Bernard Arons
Thomas A. Ault
Faye S. Baggiano, Ph.D.
Ruth L. Berkelman, M.D.
Windell R. Bradford
Claire V. Broome, M.D.
Fernando Burbano
George Buzzard
Ronald H. Carlson
Elizabeth Cusick
Diann Dawson
Beverly Dennis, III
Peter DiSturco
Gale A. Drapala
Anna L. Durand
Florenc B. Fiori, Dr.P.H.
Samuel C. Fish
Gilbert Fisher
Howard A. Foard
Margaret Foertschbeck
James Fornataro
Helene D. Gayle, M.D., M.P.H.
Charles Gillum
Richard J. Greene, M.D., Ph.D.
Myrtle Habersham
Robert H. Harry, D.D.S.
Maurice Hartman
B. Earl Henderson
Ileana Herrell, Ph.D.
Eve Hilgenberg
Sharon Smith Holston
William Hubbard
Robert A. Israel
Arthur C. Jackson
David Jenkins
Thomas M. Kickham
Eugene Kinlow
Richard A. Lemen, Ph.D.
Antonia Lenane

Michel E. Lincoln
Michael Mangano
Naomi B. Marr
Thomas S. McFee
Merle G. McPherson, M.D.
Leland W. Mosedale
Kenneth Olden
Steven A. Pelovitz
Vivian W. Pinn, M.D.
Sandra P. Perlmutter
Claude F. Pickelsimer
Luana Reyes
Sally K. Richardson
Robert A. Rickard
William A. Robinson, M.D.
Marla E. Salmon. Sc.D.
Ruth D. Sanchez-Way, Ph.D.
Paul M. Schwab
Clay E. Simpson, Ph.D.
Dale Sopper
Susanne A. Stoiber
Robert Stovenour
Edwin M. Sullivan
Linda A. Suydam
Mary Jo Veverka
Edwin L. Walker
James A. Walsh, Ph.D.
Judith N. Wasserheit, M.D.
Jacquelyn Y. White

[FR Doc. 94–28594 Filed 11–18–94; 8:45 am]
BILLING CODE 4150–04–M

Agency for Health Care Policy and Research

Notice of Review of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through its Office of Health Technology Assessment (OHTA), announces that it is initiating a Health Technology Review of the safety and effectiveness of bone marrow transplantation for hematopoietic reconstitution in patients given high-dose chemotherapy for the treatment of multiple myeloma.

Specifically, AHCPR is requesting information on:

1. Indications and/or contraindications for the use of bone marrow transplantation in this patient population,

2. Specific patient selection criteria for the use of bone marrow transplantation, and

3. Information regarding the cost of this technology.

Health Technology Reviews are brief evaluations of health technologies prepared by OHTA/AHCPR of the Public Health Service. Reviews may be conducted in lieu of a technology assessment because: the medical or scientific questions are limited and do not warrant the resources required for a full assessment; the available evidence is limited and the published medical or scientific literature is insufficient in quality or quantity for an assessment; or the time frame available precludes utilization of the full, formal assessment process.

AHCPR is interested in receiving information based on review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Also requested is information related to the characteristics of the patient population most likely to benefit from the use of bone marrow transplants in the treatment of multiple myeloma as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology. Information relevant to this review should be submitted in writing no later than [insert date 90 days after the date of publication] to OHTA at the address below.

To enable the interested scientific community to evaluate the information included in this review, AHCPR will discuss in the review only those data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submission a written consent permitting AHCPR to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a–1(c), no information received will be published or disclosed which could identify an individual or entity described in the information or could identify an entity or individual supplying the information.

Written material should be submitted to: Thomas V. Holohan, M.D., Director, Office of Health Technology Assessment, AHCPR, 6000 Executive Boulevard, Suite 309, Rockville, MD 20852, Phone: (301) 594–4023.

Dated: November 9, 1994.

Clifton R. Gaus,

Administrator.

[FR Doc. 94–28642 Filed 11–18–94; 8:45 am]
BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

Cerebral Palsy Prevention Research Workgroup—Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Cerebral Palsy Prevention Research Workgroup—Public Meeting.

Time and date: 8:30 a.m.–4 p.m., December 12, 1994.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to invited scientists with expertise in the prevention and amelioration of Cerebral Palsy, others interested in Cerebral Palsy prevention and research, and the general public.

Purpose: Cerebral Palsy is a non-progressive multihandicapping condition caused by organic brain damage before, during, or soon after birth. Cerebral Palsy has a prevalence rate of about 3/1,000 births in the United States. Researchers believe that the etiology of Cerebral Palsy is associated with numerous perinatal factors, such as maternal infections, physical trauma, premature birth, very low birthweight, anoxia, hemorrhaging, malnutrition of the mother, poor prenatal and postnatal care, and environmental hazards during pregnancy. Although Cerebral Palsy has no cure, CDC is actively seeking preventive measures based on population prevalence and epidemiologic risk factors associated with Cerebral Palsy.

Matters to be discussed: At the meeting, CDC will provide a forum for scientific discussion of the state of prevention of Cerebral Palsy based on current scientific data.

Contact person for additional information: Joseph G. Hollowell, Jr., M.D., Chief, Developmental Disabilities Branch, (F–15), NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341, telephone 404/488–7360.

Dated: November 14, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–28633 Filed 11–18–94; 8:45 am]
BILLING CODE 4163–18–M

Mine Health Research Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Health Research Advisory Committee.

Time and dates:

8:30 a.m.–5:30 p.m., December 8, 1994.
8:30 a.m.–12 noon, December 9, 1994.

Place: Bureau of Mines (BOM), Pittsburgh Research Center, Building 01 Large Conference Room, Cochrans Mills Road, Pittsburgh, Pennsylvania 15236.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to

ıine health research, including grants and ɔntracts for such research. Additionally, the ɔmmittee assesses mine health research ɛeds and advises on the conduct of mine ɛalth research.

Matters to be Discussed: The agenda will clude ergonomics research related to ining performed by BOM and by NIOSH; e NIOSH fiscal year 1995 mine health search program; Mine Safety and Health dministration priority areas for health search; and a report from the Director, IOSH. Agenda items are subject to change priorities dictate.

Contact person for additional information: egory R. Wagner, M.D., Executive cretary, Division of Respiratory Disease udies, NIOSH, CDC, Mailstop 220, 1095 illowdale Road, Morgantown, West rginia 26505, telephone (304) 285–5749.

Dated: November 14, 1994.

illiam H. Gimson,

ting Associate Director for Policy ordination, Centers for Disease Control and evention (CDC).

R Doc. 94–28632 Filed 11–18–94; 8:45 am]

LING CODE 4163–19–M

alth Resources and Services iministration

tice of Filing of Annual Report of deral Advisory Committee

Notice is hereby given that pursuant ection 13 of Public Law 92–463, the nual Report for the following Health ources and Service Administration's leral Advisory Committee has been d with the Library of Congress:

SA AIDS Advisory Committee

Copies are available to the public for pection at the Library of Congress vspaper and Current Periodical ding Room, Room 1026, Thomas erson Building, Second Street and ependence Avenue, S.E., shington, D. C. Copies may be tined from: G. Stephen Bowen, M.D., ociate Administrator for AIDS, Room –21, Parklawn Building, 5600 ers Lane, Rockville, Maryland 57, Telephone (301) 443–4588.

ted: November 15, 1994.

ie E. Baum,

sory Committee Management Officer, A.

Doc. 94–28645 Filed 11–18–94; 8:45 am]

G CODE 4160–15–P

ection to Program Announcement Cooperative Agreements for the onal AIDS Education and Training ers Program for FY 1995

e Health Resources and Services inistration (HRSA) announced in ederal Register on October 27, 1994 at 59 FR 53996, that applications will be accepted for fiscal year 1995 Cooperative Agreements for the National AIDS Education and Training Centers (AETCs) Program, authorized under section 776(a), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408. The following is a correction to that notice.

Deadline Date

The deadline date for receipt of applications has been changed to December 21, 1994.

Dated: November 15, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–28644 Filed 11–18–94; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of January and February 1995.

Name: Faculty Development Review Committee.

Date and Time: January 10–12, 1995, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 10, 8:30 a.m.–11:00 a.m.

Closed for Remainder of Meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda

The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 10, at 11:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Graduate Training in Family Medicine Review Committee.

Date and Time: January 17–20, 1995, 8:30 a.m.

Place: Parklawn Building, Conference Room K, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 17, 8:30 a.m.–11:00 a.m.

Closed for Remainder of Meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda

The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 17, at 11:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Predoctoral Training Review Committee.

Date and Time: February 1–3, 1995, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on February 1, 8:30 a.m.–11:00 a.m.

Closed for Remainder of Meeting.

Purpose: The Predoctoral Training Review Committee shall review applications that either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine.

Agenda

The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on February 1, at 11:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Name: Departments of Family Medicine Review Committee.

Date and Time: February 14–16, 1995, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on February 14, 8:30 a.m.–11:00 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments of Family Medicine Review Committee shall review

applications that assist in meeting the costs of establishing, maintaining, or improving academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine.

Agenda

The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on February 14, at 11:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the above Councils should contact Mrs. Sherry Whipple, Executive Secretary, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Dated: November 15, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–28646 Filed 11–18–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Tuberculosis Academic Awards.
Date: December 5, 1994.
Time: 9:15 a.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Louise Corman, Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7452.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Asthma Academic Awards.
Date: December 6, 1994.
Time: 9:15 a.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Louise Corman, Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7452.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–28607 Filed 11–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Cardiovascular Health Study-Magnetic Resonance Imaging Reading Center (CHS).
Date: December 5, 1994.
Time: 8:00 a.m.
Place: Marriott Washingtonian, Gaithersburg, Maryland.
Contact Person: Jon Ranhand, Ph.D., 5333 Westbard Avenue, Room 554, Bethesda, Maryland 20892, (301) 594–7439.
Purpose/Agenda: To evaluate and review contract proposals.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–28608 Filed 11–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIMH, of the National Institute of Mental Health for November 1994.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting will be closed for the review, discussion, and evaluation of staff scientists and individual programs and projects. The subject matter to be reviewed contains information of a confidential nature, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Board of Scientific Counselors, NIMH.
Contact: Jack D. Maser, Ph.D, Building 10, Room 4N224, Telephone: 301, 496–4183.
Meeting Date: November 30, 1994.
Time: 9 a.m.
Place: Building 10, Room 4N230, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research, 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282;

Mental Health Research Service Awards for Research Training; and 93.921, ADAM-HA Science Education Partnership Award.)

Dated: November 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–28643 Filed 11–18–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: November 30, 1994.
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room 220 Telephone Conference.
Contact Person: Dr. Daniel Mc Donald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Clinical Sciences.
Date: December 1, 1994.
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room 220, Telephone Conference.
Contact Person: Dr. Daniel Mc Donald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 5, 1994.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., Room 226, Bethesda, MD 20892, (301) 594–7167.

Name of SEP: Behavioral and Neurosciences.
Date: December 7, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 325C, Telephone Conference.
Contact Person: Dr. Leonard Jakubszak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Behavioral and Neurosciences.
Date: December 7, 1994.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 319C, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358.

Name of SEP: Clinical Sciences.
Date: December 8, 1994.
Time: 11:00 a.m.
Place: NIH, Westwood Building, Room 354B, Telephone Conference.
Contact Person: Dr. Kushtaq Khan, Scientific Review Admin., 5333 Westbard Ave., Room 354B, Bethesda, MD 20892, (301) 594–7156.

Name of SEP: Clinical Sciences.
Date: December 12, 1994.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 220, Telephone Conference.
Contact Person: Dr. Daniel Mc Donald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Microbiological and immunological Sciences.
Date: December 12, 1994.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 13, 1994.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228

Name of SEP: Microbiological and Immunological Sciences.
Date: December 13, 1994.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 14, 1994.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 14, 1994.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228.

Name of SEP: Behavioral and Neurosciences.
Date: December 15, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 321, Telephone Conference.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Admin., 5333 Westbard Ave., Room 321, Bethesda, MD 20892, (301) 594–7245.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 15, 1994.
Time: 10:00 p.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 5333 Westbard Ave., Room 236, Bethesda, MD 20892, (301) 594–7228.

Name of SEP: Chemistry and Related Sciences.
Date: December 19, 1994.
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room 236, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 5333 Westbard Ave., Room 221, Bethesda, MD 20892, (301) 594–7324.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: November 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–28606 Filed 11–18–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–052–1430–01; IDI–28923]

Exchange of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public Land in Blaine County, Idaho.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716;

T. 3 N., R. 18 E., Boise Meridian,
Section 26: W½NW¼, SE¼NW¼.

The area described contains 120.0 acres in Blaine County.

In exchange for this land, the United States will acquire the following described land from A & P Partnership:

In fee title:

T. 2 N., R. 18 E., Boise Meridian,
Section 2: E½SE¼;
Section 11: NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, N½SE¼.

The area described contains 480.0 acres in Blaine County.

DATES: The publication of this notice in the Federal Register will segregate the public land described above to the extent that it will not be subject to appropriation under the public land laws. As provided by the regulations in 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange, including the environmental analysis and record of public contact is available for review at the Shoshone District Office located at 400 F Street in Shoshone, Idaho.

SUPPLEMENTARY INFORMATION: The purpose of the land exchange is to facilitate more efficient management of public land through consolidation of ownership and to benefit the public interest by obtaining important resource values. The public land to be exchanged is isolated and difficult to manage with limited resource values.

The private land being offered has very important values for wildlife, and watershed, that merit acquisition for public ownership. The exchange is consistent with BLM land use plans, and the public interest would be better served by making this exchange.

The value of the land to be exchanged is approximately equal, and the difference is within the legal limits. Equalization of values will be achieved through cash payment by the proponent.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

For a period of 45 days from publication of this notice, interested parties may submit comments as follows: David A. Koehler, Bureau of Land Management, Shoshone District Office, P.O. Box 2–B, Shoshone ID 83352–1522.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 10, 1994.

Norman L. Walker,

Acting Associate District Manager.

[FR Doc. 94–28657 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Pea Ridge National Military Park Advisory Team; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 6:00 p.m., on Thursday, December 15, 1994, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matters to be discussed at this meeting include:

—Location of park picnic area

—Park information, Park boundary study

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: November 8, 1994.

John D. Linahan,

Acting Regional Director, Southwest Region.

[FR Doc. 94–28635 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–70–M

Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission will be held at 9:30 a.m. to 3:00 p.m., at the following location and date.

DATES: November 29, 1994.

LOCATION: Carambola Beach Resort and Gulf Club, Estate Davis Bay, Kingshill, St. Croix, Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Francis Peltier, Superintendent, Virgin Islands National Park, 6310 Estate Nazareth #10, St. Thomas, U.S. Virgin Islands 00802.

SUPPLEMENTARY INFORMATION: The purpose of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands Commission is to make recommendations on how all lands and waters within the boundaries of the park can be jointly managed by the Governments of the United States Virgin Islands and the United States in accordance with Public Law 102–247; to consult with the Secretary of the Interior on the development of the general management plan required by Section 105 of Public Law 102–247; and to provide advice and recommendations to the Government of the United States Virgin Islands, upon request of the Government of the United States Virgin Islands.

Matters to be discussed at this meeting include training, concurrent jurisdiction, management objectives, land protection planning, administrative issues.

This meeting will be open to the public. However, facilities space for accommodating members of the public are limited.

Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above at least ten (10) working days prior to the meeting. Members of the public may request ahead of time to address the

commission. Comments will be limited to 5 minutes. Written copies of comments must be submitted to the commission in order to be included in the official record of the meeting. Minutes of the meeting will be available at the Virgin Islands National Park headquarters at the above address for public inspection approximately four (4) weeks after the meeting.

Dated: November 9, 1994.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 94–28587 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–430 (Sub-No. 1X)]

Warren and Saline River Railroad Company—Abandonment Exemption—in Bradley County, AR

Warren and Saline River Railroad Company (WSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 11 miles of line between milepost 3.0 near Warren and the end of the line at milepost 14.0 at Rock Island Jct., in Bradley County, AR.

WSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 21, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 1, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 12, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Ave., N.W., Washington, DC 20005–3934.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

WSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 25, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28698 Filed 11–18–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Farmland Industries, Inc., Burlington Northern Railroad Company, and Shell Oil Company*, Civil Action No. 94–6142–CV–SJ–6, was lodged on 9/24/94 with the United States District Court for the Western District of Missouri, St. Joseph Division. Burlington Northern Railroad Company, a Delaware corporation, is the owner of the Site (also known as the Farmland Industries, Inc. Old Insecticide Plant Site) located at or near 1202 4th Street, in St. Joseph, Buchanan County, Missouri. Farmland Industries, Inc., a Kansas corporation, is the successor in interest to and assumed the liability of Missouri Chemical Company who operated the Site at the time of disposal of hazardous substances. Shell Oil Company, a Delaware corporation, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site. The Environmental Protection Agency (EPA) incurred costs in investigating the disposal of hazardous substances and overseeing a removal action at the Site undertaken by Farmland Industries, Inc. pursuant to an administrative order on consent. The proposed Consent Decree provides that the Defendants will pay $274,487.44 to the United States, representing 100% of the past costs incurred and paid by EPA through March 4, 1994.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Farmland Industries, Inc., Burlington Northern Railroad Company, and Shell Oil Company*, DOJ Ref. #90–11–2–920.

The proposed consent decree may be examined at the office of the United States Attorney, 1201 Walnut Street, Suite 2300, Kansas City, MO 64106–2149; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–

0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 94–28603 Filed 11–18–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–096]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Toray Composites (America), Inc., of Tacoma, Washington, 98446, a partially exclusive license to practice the invention protected by the U.S. Patent Application No. 08/209,512 entitled "Phenylethynyl Terminated Imide Oligomers", which was filed on March 3, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

NASA hereby gives notice of intent to grant Toray Composites (America), Inc., of Tacoma, Washington, 98466, a partially exclusive license to practice the invention protected by the U.S. Patent Application No. 08/2XX/XXX entitled "Imide Oligomers Endcapped with Phenylethynyl Phthalic Anhydrides and Polymers Therefrom", which was filed on November XX, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR Part 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objectives to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by January 20, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: November 10, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–28637 Filed 11–18–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: December 8, 1994, 10:00 a.m. to 4:00 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of P.L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on December 8, 1994 from 10:00 a.m. to 4:00 p.m. The meeting of the Board is open to the public. The agenda includes discussions of reauthorization of the Adult Education and National Institute for Literacy Acts, update of National Institute for Literacy program activities, and future Board plans for 1995. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 p.m.

Dated: November 15, 1994.

Carolyn Staley,

Acting Executive Director, National Institute for Literacy.

[FR Doc. 94–28595 Filed 11–18–94; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Co. (Donald C. Cook Nuclear Plant Units 1 and 2); Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 20.2001, "(a) A licensee shall dispose of licensed material only—(1) By transfer to an authorized recipient as provided in § 20.2006 or in the regulations in parts

30, 40, 60, 61, 70, or 72 of this chapter; or (2) By decay in storage; or (3) By release in effluents within the limits in § 20.1301; or (4) As authorized under §§ 20.2002, 20.2003, 20.2004, or § 20.2005."

III

By letter dated October 9, 1991, as supplemented October 23, 1991, September 3, 1993, and September 29, 1993, the licensee requested approval for disposal of licensed material pursuant to Title 10 of the Code of Federal Regulations, Part 20, Section 302. (That section has since been renumbered 2002).

The licensee is requesting approval to leave approximately 942 cubic meters of slightly contaminated sludge in place underneath the upper parking lot on the D.C. Cook site. In 1982, approximately 942 cubic meters of slightly contaminated sludge were removed from the turbine room sump absorption pond and pumped to the upper parking lot located within the exclusion area of the D.C. Cook plant. The contaminated sludge was spread over an area approximately 4.7 acres. The sludge contained a total radionuclide inventory of 8.89 millicuries (mCi) of Cesium–137, Cesium–136, Cesium–134, Cobalt–60, and Iodine–131.

IV

Pursuant to 10 CFR 20.2301, "The Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not result in undue hazard to life or property." The staff has determined that the requested approval for disposal of licensed material pursuant to Title 10 of the Code of Federal Regulations, Part 20, Section 2002 necessitates an exemption to 10 CFR 20.2001.

The licensee in 1982 evaluated the following potential exposure pathways to members of the general public from the radionuclides in the sludge: (1) External exposure caused by groundshine from the disposal site, (2) internal exposure caused by inhalation of resuspended radionuclide, and (3) internal exposure from ingesting ground water. The staff has reviewed the licensee's calculational methods and assumptions and finds that they are consistent with NUREG–1101, "Onsite Disposal of Radioactive Waste." Volumes 1 and 2, November 1986 and February 1987, respectively. The staff finds the assessment methodology acceptable.

The doses calculated by the licensee for the maximally exposed member of the public based on a total activity of 8.89 mCi disposed are listed below.

Pathway	Whole body dose received by maximally exposed individual (mrem/yr)
Groundshine	0.94
Inhalation	.94
Groundwater Ingestion	.73
Total	2.61

For perspective, the radiation from the naturally occurring radionuclides in soils and rocks plus cosmic radiation gives a person in Michigan a whole-body dose rate of about 89 mrem per year outdoors.

On July 5, 1991, the licensee re-sampled the onsite disposal area to assure that no significant impacts and adverse effects had occurred. A counting procedure based on the appropriate environmental low-level doses was used by the licensee; however, no activity was detected during the re-sampling. This is consistent with the original activity of the material and the decay time. The reduced level of radioactivity would not be detectable against background through the shielding provided by the parking lot surface. The 1991 re-sampling process used by the licensee confirms that the radiological impact of the 1982 disposal was very small. Based on the staff's review of the licensee's discussion, the staff finds that the potential radiation exposure due to leaving the contaminated sludge in place is significant. Based on the staff review of the exposure potential of the original quantity of material, and the measured level of decay, the continued presence of the material poses no more radiological impact than disposal methods authorized by 10 CFR 20.2001. Therefore, the licensee's proposed action would not pose a radiological hazard to life or property and the exemption to 10 CFR 20.2001 allowing onsite storage of the radioactive material pursuant to 10 CFR 20.2002 is acceptable.

V

The staff has reviewed the licensee's request and concluded that issuance of this exemption will not endanger life or property and will have no significant effect on the safety of the public or the plant.

Accordingly, the Commission has determined, pursuant to 10 CFR 20.2301, that this exemption as described in Section IV is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 20.2001.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (October 31, 1994, 59 FR 54477).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of November 1994.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–28640 Filed 11–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–30265–ML–Ren, ASLBP No. 95–701–01–ML–Ren]

Innovative Weaponry, Inc., Albuquerque, NM, Byproduct Materials License No. 30–23697–01E; Notice of Hearing

November 15, 1994.

Notice is hereby given that, by Memorandum and Order dated November 15, 1994, the Presiding Officer in this proceeding has granted the October 5, 1994 request for a hearing of Innovative Weaponry, Inc. (IWI or Applicant), acting through its President, Mr. Barry Mowry. On September 23, 1994, the Nuclear Regulatory Commission Staff denied IWI's June 1, 1993 application for renewal of its byproduct materials license authorizing the distribution of luminous gunsights or weapons containing luminous gunsights to persons exempt from the requirements for a license pursuant to 10 C.F.R. § 30.19. The Staff also imposed a Demand for Information upon Mr. Mowry. The hearing will involve IWI's appeal from these Staff rulings.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR part 2, Subpart L. Further details appear in the November 15, 1994 Memorandum and Order referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room,

Gelman Building, 2120 L St. N.W., Washington, D.C.

The Applicant, Mr. Mowry and the NRC Staff are parties to this proceeding. In accordance with 10 CFR 2.1205(i)(4), any person whose interest may be affected by this proceeding may within 30 days of publication of this Notice file a petition for leave to intervene. Such petition must identify (1) the interest of the petitioner in the proceeding, (2) how that interest may be affected by the results of the proceeding, with particular reference to the factors set out in 10 CFR 2.1205(g) (and, in particular, whether the petitioner's specified areas of concern are germane to the subject matter of the proceeding), (3) the petitioner's area of concern about the licensing activity that is the subject matter of the proceeding, and (4) the circumstances establishing that the request is timely (in accord with the standard set forth in this Notice).

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies should be served upon the Presiding Officer, the Special Assistant, the Assistant General Counsel for Hearings and Enforcement, and the Applicant, through its attorney Gerald R. Bloomfield, Esq., 1516 San Pedro NE., Albuquerque, New Mexico 87110, and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Pursuant to 10 CFR 2.1205(j)(2), any party may file an answer to a petition to intervene within 10 days of service of such petition (15 days in the case of the NRC Staff).

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this license-renewal proceeding. Although these statements are not evidence and do not become part of the decisional record, the Presiding Officer may ask the parties to develop information for the record (or at least have the NRC Staff consider such information) concerning matters raised in such statements and not directly covered by issues identified by the parties. Limited appearances are usually in writing although, if the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may hear oral statements. Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of statements and requests should also be forwarded to the Presiding Officer.

Rockville, MD, November 15, 1994.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 94–28641 Filed 11–18–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Renewal of the Federal Prevailing Rate Advisory Committee

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management has renewed the charter for the Federal Prevailing Rate Advisory Committee (the Committee). It takes this action in accordance with the Federal Advisory Committee Act, which requires rechartering advisory committees at least every 2 years to insure against continuing committees that no longer carry out their original purposes. The Committee will continue to advise the Director of the Office of Personnel Management in matters pertaining to establishing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Personnel Management.

Anthony F. Ingrassia,

Chairman.

Federal Prevailing Rate Advisory Committee

Charter

A. *Official Designation.* The Federal Prevailing Rate Advisory Committee.

B. *Objectives and Scope.* The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under 5 U.S.C., chapter 53, subchapter IV, as amended.

C. *Duration.* There is no time limit set forth in 5 U.S.C., chapter 53, subchapter IV. The mandate of the Committee is one of a continuing nature, until amended or revoked by appropriate act of Congress.

D. *Responsible Agency Official.* The Committee makes recommendations to the Office of Personnel Management. The Chairman of the Committee reports to the Director, Office of Personnel Management.

E. *Agency Providing Support.* United States Office of Personnel Management.

F. *Committee Responsibilities.* The Committee is advisory; its primary responsibility is to study the prevailing rate system and from time to time advise the Office of Personnel Management thereon. The Committee shall submit an annual report to the Office of Personnel Management and the President, for transmittal to Congress, as required by section 5347(e) of 5 U.S.C.

G. *Estimated Annual Operating Costs in Dollars and Staff-Years.* Using current salary schedules, $198,000.00 and two staff-years.

H. *Estimated Number and Frequency of Meetings.* The meeting schedule contemplated for the Committee is two meetings each month throughout a calendar year; more frequent meetings shall be scheduled when deemed necessary.

I. *The Committee's Termination Date.* There is no statutory termination due. The Chairman of the Committee serves for a 4-year term, as set forth in section 5347(a)(1) of 5 U.S.C. Management members serve at the pleasure of the designating authority. Labor membership is reviewed every 2 years to assure entitlement under the criteria set forth in section 5347(b) of 5 U.S.C.

J. *Date Filed.*

Dated: October 31, 1994.

James B. King,

Director.

[FR Doc. 94–28586 Filed 11–18–94; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–941]

Extension of Comment Period for Section 302 Investigation Concerning European Community Banana Import Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of comment period for an investigation under section 302(a) of the Trade Act of 1974, as amended (Trade Act).

SUMMARY: On October 17, 1994, the United States Trade Representative (USTR) initiated an investigation under Section 302(a) of the Trade Act, as amended (19 U.S.C. 2412(a)), concerning the European Union's practices with respect to the importation of bananas (59 Fed. Reg. 53495). Interested persons have requested that USTR extend the period for comment. In response to this request, USTR has decided to extend the closing date for the comment period from November 17, 1994 until December 1 1994

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Edward Kaska, Director for European Services and Agriculture, (202) 395–3320; or Irving Williamson, Deputy General Counsel, (202) 395–3432. For further information regarding filing procedures, contact Sybia Harrison, Special Assistant to the Section 301 Committee, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed by noon on December 1, 1994. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–94) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–28597 Filed 11–18–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34971; File No. SR–Amex–94–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Short Sales of Nasdaq/NM Securities of Companies Involved in Mergers or Acquisitions

November 14, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 14, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 957 regarding the designation of certain Nasdaq National Market securities ("NM securities") by specialists and registered options traders as exempt from the bid test imposed under the NASD Rules of Fair Practice.

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

On September 6, 1994, the NASD put into effect a rule prohibiting the execution of a short sale in NM securities at or below the current inside bid when that inside bid is below the previous inside bid.[2] In part, the NASD's rule provides an exemption for qualified Amex options specialists and Registered Options Traders ("Traders") for which the Exchange has also established rules to provide for this exemption for those members.[3] The Exchange now seeks to extend the exemption to certain short sales of a company that is involved in a publicly announced merger or acquisition with the issuer of a stock underlying an option that is eligible for the exemption pursuant to Amex Rule 957 and the NASD's short sale rule.

The Exchange's proposal recognizes that when an NM security becomes involved in a merger or acquisition, specialists and traders may need to hedge positions in options on the NM security by buying or selling shares of stock of the other company involved in the merger or acquisition, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on that stock, buying or selling the stock itself may at times be the only feasible way for a specialist or trader to hedge a position in options on the NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. The proposed rule change will facilitate hedging by options specialists and traders by allowing them to sell short shares of the "other" company involved in the merger for hedging purposes and designate those short sales as exempt from the NASD's short sale rule. The Exchange believes that its proposed rule change will enhance the ability of specialists and traders to perform their market-making functions, which will contribute to the liquidity of the market for options, as well as the market for stocks of both companies.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act. Specifically, the Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885.

[3] *See* Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999.

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–94–42 and should be submitted by December 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28674 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34972; File No. SR–CBOE–94–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Options Market Maker Exemption From the Nasdaq Short Sale Bid Test

November 14, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 4, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 29, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Rule 15.10[3] concerning the designation of certain short sales of Nasdaq National Market Securities ("Nasdaq/NM securities") by market makers as exempt from the bid test imposed under NASD Rules of Fair Practice.[4]

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

The purpose of the proposed rule change is to permit CBOE options market makers to designate as "bid test exempt" under CBOE Rule 15.10 certain short sales of the stock of a company that is involved in a merger or acquisition with the issuer of a stock underlying an option that has been designated as a "designated Nasdaq/NM security" in accordance with CBOE Rule 15.10(c)(2)(ii)(B). To qualify as bid test exempt under this proposal, a short sale must serve to hedge a position in an option covering the designated Nasdaq/NM security, where the option position was or will be established in the course of bona fide market making activity.

This proposal recognizes that when a designated Nasdaq/NM security becomes involved in a merger or acquisition, CBOE market makers may need to hedge positions in options on the designated Nasdaq/NM security by buying or selling shares of stock of the other company involved in the merger or acquisition, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on that stock, buying or selling the stock itself may at times be the only feasible way for a market maker to hedge positions in options on the designated Nasdaq/NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. The proposed rule change will facilitate hedging by options market makers in this circumstance, by allowing them to sell short shares of the other company involved in the merger for hedging purposes, and to designate those short sales as bid test exempt. The CBOE believes that its proposal will enhance the ability of CBOE market makers to perform their market making functions, thereby contributing to the liquidity of the market for options, as well as the market for the stocks of both companies. This proposed rule change, like the remainder of Rule 15.10, is intended to operate in coordination with an exemption from the bid test provided for in the NASD Rules of Fair Practice. It is CBOE's understanding that the NASD intends to publish an interpretation of its bid test rule that is consistent with the amendment to CBOE Rule 15.10 proposed herein.

CBOE believes that the proposed rule change will enhance the ability of market makers to perform their market making activities, thereby contributing to the depth and liquidity of the options market, and thus will serve in furtherance of the objectives of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and promote the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

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[4] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the CBOE adds the express requirement that the merger or acquisition must be "publicly announced" to qualify as an exempt hedge transaction in an "M&A" security. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Francois Mazur, Attorney, Office of Market Supervision, Commission, dated September 29, 1994 ("Amendment No. 1").

[3] CBOE Rule 15.10 recently was approved as an 18-month pilot. *See* Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. The rule change proposed herein is intended to apply only so long as Rule 15.10 is effective.

[4] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–27 and should be submitted by December 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28675 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34970; File No. SR–PSE–94–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to Short Sales of Nasdaq/NM Securities of Companies Involved in Mergers or Acquisitions

November 14, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 18, 1994, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 14, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Rule 4.19 concerning the designation of certain short sales of Nasdaq National Market securities ("NM securities") by market makers as exempt from the NASD's bid test rule.[3]

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 qualified 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.

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the PSE adds the requirement that the merger or acquisition must be "publicly announced" to qualify as an exempt hedge transaction in an "M&A" security. *See* letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Francois Mazur, Attorney, Office of Market Supervision, Commission, dated October 13, 1994 ("Amendment No. 1").

[3] *See NASD Manual*, Rules of Fair Practice, Article III, Section 48 ("NASD Rules").

(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 permit PSE options market makers to designate as bid test exempt under PSE Rule 4.19 certain short sales of the stock of a company that is involved in a merger or acquisition with the issuer of a stock underlying an option that has been designated as a "designated Nasdaq/NM security" pursuant to PSE Rule 4.19(c)(2)(B)(ii). To qualify as bid test exempt under this proposal, the short sales of the company stock involved in the merger or acquisition must serve to hedge a position in an option overlying the designated NM security, where the option position was or will be established in the course of bona fide market making activity.

This proposal recognizes that when a designated NM security becomes involved in a merger or acquisition, PSE market makers may need to hedge positions in options on the designated NM security by buying or selling shares of stock of the other company involved in the merger or acquisition, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on that stock, buying or selling the stock itself may at times be the only feasible way for a market maker to hedge positions in options on the designated NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. The proposed rule change will facilitate hedging by options market makers in this circumstance by allowing them to sell short shares of the "other" company involved in the merger for hedging purposes, and to designate those short sales as bid test exempt. The PSE believes that its proposal will enhance the ability of PSE market makers to perform their market making functions, thereby contributing to the liquidity of the market for options, as well as the market for the stocks of both companies. This proposed rule change, like the current Rule 4.19,[4] is intended to operate in coordination with an exemption from the bid test provided for in the NASD Rules.

The PSE believes that because the proposed rule change will enhance the ability of market makers to perform their market making activities, thereby contributing to the depth and liquidity of the options market, it will serve in furtherance of the objectives of Section 6(b)(5) of the Act to promote just and

[4] *See* File No. SR–PSE–94–16 (pending).

equitable principles of trade and to protect investors and promote the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–94–23 and should be submitted by December 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28676 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Clear Channel Communications, Inc., Common Stock, $0.10 Par Value) File No. 1–9645

November 15, 1994.

Clear Channel Communications, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on November 4, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before December 6, 1994, submit a letter to the Secretary of the Securities and Exchange Commission, 450 fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–28677 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1993).

[Investment Company Act Release No. 20699; International Series Release No. 750; 812–9150]

The Hongkong and Shanghai Banking Corporation Limited; Notice of Application

November 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Hongkong and Shanghai Banking Corporation Limited ("HSBC").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: HSBC seeks an order to permit registered investment companies (other than investment companies registered under section 7(d)) ("Investment Companies") and any custodians of such Investment Companies to maintain their foreign securities and other assets in the custody of The British Bank of the Middle East ("BBME") and Hongkong Bank of Australia Limited ("HKBA").

FILING DATES: The application was filed on August 8, 1994 and amended on November 8, 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 December 12, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o David R. Sahr, Esq., Shaw, Pittman, Potts & Trowbridge,

2300 N Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, 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. HSBC is a bank organized and existing under the laws of Hong Kong. HSBC is a wholly-owned subsidiary of HSBC Holdings BV ("HHBV"), a holding company organized in the Netherlands. HHBV is a wholly-owned subsidiary of HSBC Holdings plc, a holding company incorporated in Great Britain and registered in England and Wales. HSBC is supervised and regulated by the Hong Kong Monetary Authority under the Banking Ordinance. In the United States, HSBC, through its branches and agency in New York, California, Illinois, Washington, Oregon, and Texas, is licensed and supervised by the respective banking authorities in those states and supervised by the Board of Governors of the Federal Reserve System under the International Banking Act of 1978, as amended. As of December 31, 1993, HSBC had total consolidated assets of $146.5 billion, and consolidated shareholders' equity of approximately $4.7 billion.

2. BBME, a wholly-owned subsidiary of HHBV, is a bank organized and existing under the laws of Great Britain. In March 1994, BBME's head office moved to Jersey, and BBME currently is supervised and regulated by the Financial Services Department of the States of Jersey. BBME, through its branch network of 25 offices, provides a full range of banking services for both corporate and individual customers in the Middle East, the Bahamas, India, Switzerland, and the United Kingdom, and has significant involvement in trade finance. As of December 31, 1993, BBME had total assets of approximately $4.9 billion, and total consolidated shareholders' equity of approximately $193 million. BBME intends to establish custodial services in selected offices during 1994.

3. HKBA, a wholly-owned subsidiary of HSBC, is organized and existing under the laws of Australia. HKBA is regulated and supervised by the Reserve Bank of Australia, which exercises supervisory authority over the ownership, investments, activities, and capital levels of banks incorporated in Australia. HKBA, operating through six branches across Australia, provides a full range of banking services, including trade finance, retail and corporate banking, and securities services. Together with its subsidiary, HKBA Nominees Limited, HKBA also provides custodian services. As of December 31, 1993, HKBA had total assets of approximately $2.8 billion, and shareholders equity of approximately $154 million. Assets under custody as of May 30, 1994, were approximately $1.3 billion.

4. Applicant seeks an order under section 6(c) exempting HSBC, BBME, HKBA, and Investment Companies and their custodians from section 17(f). The order would let HSBC, Investment Companies and their custodians maintain "foreign securities," as defined in rule 17f–5, cash, and cash equivalents (collectively, "Assets") in the custody of BBME or HKBA. If the relief is granted, HSBC intends to maintain such Assets with BBME in any of the locations in which BBME has a branch and with HKBA in Australia.

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 having at all times an aggregate capital, surplus, and undivided profits of at least $500,000. 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. Therefore, the only foreign entities that may serve as custodians for registered management investment companies are the overseas branches of U.S. banks.

2. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. The rule 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 shareholders' equity in excess of U.S. $200,000,000.

3. HSBC satisfies the requirements of rule 17f–5 because it is organized under the laws of Hong Kong, regulated there as a bank by the Hong Kong Monetary Authority, and has shareholders' equity well in excess of the Hong Kong dollar equivalent of $200,000,000.

4. BBME and HKBA each satisfy the requirements of rule 17f–5 except the shareholders' equity requirement. Absent exemptive relief, therefore, BBME and HKBA may not serve as a custodian for Investment Company Assets.

5. Applicant asserts that each of BBME and HKBA is or will be capable and well-qualified to provide custodial and sub-custodial services for Investment Company Assets. HSBC represents that the proposed foreign custody arrangements will afford the Assets of Investment Companies held by BBME or HKBA the same protection afforded by rule 17f–5 as if the assets were held in the direct custody of HSBC. HSBC will co-sign the agreement described in condition 2 below and will assume liability for BBME's and HKBA's performance. Thus, under the agreement, the delegation to BBME and HKBA of the duties and obligations of HSBC will not result in any reduction in the level of protection afforded the Assets of the Investment Companies.

6. Section 6(c) in relevant part permits the SEC to exempt any person or class of persons from any provision of the Act, or from 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. The foreign custody arrangements proposed regarding BBME and HKBA satisfy the requirements of rule 17f–5 in all respects other than with regard to BBME and KHBA's level of shareholders' equity.

2. Applicant will deposit Assets with BBME and HKBA only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which any of BBME or HKBA fail to satisfy all the requirements of rule 17f–5. Each Agreement will be a three-party agreement among HSBC and

BBME or HKBA, as appropriate, and the Investment Company or the custodian for an Investment Company pursuant to which HSBC will undertake to provide specified custodial or sub-custodial services and will delegate to BBME or HKBA such of the duties and obligations of HSBC as will be necessary to permit BBME or HKBA to hold in custody Assets of the Investment Company or custodian. The Agreement will further provide that the delegation by HSBC to BBME or HKBA will not relieve HSBC of any responsibility to the Investment Company or custodian for an Investment Company for any loss due to such delegation, and that HSBC will be liable for any loss or claim arising out of or in connection with the performance by BBME or HKBA of their responsibilities under the Agreement to the same extent as if HSBC had itself been required to provide custody services under the Agreement.

3. HSBC currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

FR Doc. 94–28679 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Philippine Long Distance Telephone Company, Common Stock, P5 Par Value) File No. 1–3006

November 15, 1994.

Philippine Long Distance Telephone Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its American Depositary Receipts (the "ADRs") representing the American Depositary Shares (the "ADSs") each representing one share of Common Stock have been listed on the New York Stock Exchange, Inc. ("NYSE") and Pacific Stock Exchange, Inc. ("PSE"). The Company's ADSs commenced trading on the NYSE and PSE at the opening of business on October 19, 1994 and concurrently therewith the Common Stock was suspended from trading on the Amex and PSE.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its ADRs representing ADSs on the NYSE and PSE and its common stock on the Amex on the PSE. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for the common stock and its ADRs.

Any interested person may, on or before December 6, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–28678 Filed 11–18–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before December 21, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Review.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory, Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Application for Loan Pool

Form No.: SBA Form 1454

Frequency: On Occassion

Description of Respondents: SBA Loan Pool Assemblers

Annual Responses: 450

Annual Burden: 1350.

Dated: November 15, 1994.

Calvin Jenkins,

Assistant Administrator for Administration.

[FR Doc. 94–28650 Filed 11–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: November 15, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or

Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on November 15, 1994:

DOT No: 4009
OMB No: New
Administration: Federal Aviation Administration
Title: Survey of Safety Intervention Strategies
Need for Information: Title 49 CFR Section 312, Civil Aeromedical Research is authorized to conduct aeromedical research.
Proposed Use of Information: This information will be used to evaluate existing safety programs and develop new safety information dissemination procedures.
Frequency: One time
Burden Estimate: 5,000 hours
Respondents: Individuals
Form(s): None
Average Burden Hours Per Response: 1 hour per response

DOT No: 4010
OMB No: 2115–0595
Administration: United States Coast Guard
Title: Vessel Response Plan, Facility Response Plans, Additional Requirements for Prince William Sound, AK and Shipboard Oil Pollution Emergency Plan
Need for Information: Section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA), requires that owners of response facilities and vessels that carry oil, prepare and submit to the Coast Guard for approval, response plans in the event of an oil spill. Section 5005 of OPA 90 establishes requirements for response plans to provide for oil spill containment, removal equipment, training of local residents in oil spill removal and periodic testing and certification of equipment. Regulation 26 of Annex I of MARPOL 73/78 requires every oil tanker of 150 gross tons and above to carry on board an approved Shipboard Oil Pollution Emergency Plan.
Proposed Use of Information: This information will be used to ensure that (1) certain vessels entering U.S. waters and that response facilities are adequately prepared to respond to an oil or hazardous substance spill, (2) local residents are trained in oil spill removal, and that periodical testing and certification or response equipment are performed, and (3) that ships of U.S. registry or are operating under the authority of the U.S., have on board oil pollution emergency plans in case of a discharge of oil.
Frequency: On Occasion
Burden Estimate: 1,121,198.20 hours
Respondents; Owners or operators of response facilities and vessels carrying oil
Form(s): None
Average Burden Hours Per Response: 152 hours reporting 45 hours recordkeeping

DOT No: 4011
OMB No: 2133–0503
Administration: Maritime Administration
Title: Inventory of American Intermodal Equipment
Need for Information: Executive Order 12656 and 46 CFR Part 340 require the most efficient use of inventoried equipment, especially in the event of deployment of armed forces or other national emergency.
Proposed Use of Information: The information will be used by elements of the Department of Defense and Maritime Administration to expedite logistical support for military operations and helps to identify potential shortages of container and other intermodal equipments.
Frequency: Annual
Burden Estimate: 66 hours
Respondents: U.S. steamship and intermodal equipment leasing companies.
Form(s): None
Average Burden Hours Per Response: 3 hours

DOT No: 4012
OMB No: 2120–0559
Administration: Federal Aviation Administration
Title: FAA Research and Development Grants
Need for Information: The Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990, P.L. 101–508 Section 9205 and Section 9208, and the Aviation Security Improvement Act of 1990, P.L. 101–604, Section 107(d), OMB A–110, and A–21 requires this information.
Proposed Use of Information: The information will be used for grant administration and review in accordance with applicable OMB circulars A–110 and A–21.
Frequency: On occasion, Quarterly, Semiannually, and Close Out
Burden Estimate: 2,800 hours annually
Respondents: State and local government, businesses, small businesses, and non-profit institutions applying for research and development grant money.
Form(s): FAA Forms 9550–1, 2, 3 and 5; SFs 270, 272, 269 and LLL
Average Burden Hours Per Response: 14 hours per response

DOT No: 4013
OMB No: New (2115–002 expired)
Administration: United States Coast Guard
Title: Great Lakes Pilotage Rate Methodology (92–072)
Need for Information: The Great Lakes Pilotage Act of 1960 (Public Law 86–555, 46 U.S.C. 9301 et seq.) authorizes the Secretary of Transportation to "prescribe a uniform system of accounts" and "perform audits and inspections" of Great Lake pilotage pools (46 U.S.C. 9304).
Proposed Use of Information: This information will be used by the Director of Great Lakes Pilotage to carry out financial oversight of the Great Lakes pilot associations and to set Great Lakes pilotage rates.
Frequency: Monthly; Semi-Annually
Burden Estimate: 18 hours
Respondents: Three Great Lakes pilot associations
Form(s): None
Average Burden Hours Per Response: 6 hours

DOT No: 4014
OMB No: 2125–0525
Administration: Federal Highway Administration
Title: Emergency Relief Funding Applications
Need for Information: 23 USC 125(a) requires States to submit an application for emergency relief to the Federal Highway Administration (FHWA). The information is needed for FHWA to fulfill its statutory obligations regarding funding determinations on emergency work to repair highway facilities.
Proposed Use of Information: The information is used for the FHWA to

allocate emergency relief (ER) funds based on the application of the State highway agency.
Frequency: On occasion
Burden Estimate: 3,600 hours
Respondents: State Highway agencies
Form(s): None
Average Burden Hours Per Response: 200 hours reporting
DOT No: 4015
OMB No: New
Administation: Federal Aviation Administration
Title: 1994 FAR 107 Regulatory Review Survey
Need for Information: 5 USC Sections 601–612 and Executive Order 12866, Regulatory Planning and Review
Proposed Use of Information: The information will be used by the FAA to accurately forecast the impact of the proposed revision to FAR Part 107.
Frequency: One Time
Burden Estimate: 304 hours
Respondents: State and local governments
Form(s): None
Average Burden Hours Per Response: 2 hours per response

Issued in Washington, D.C. on November 15, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–28655 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–62–P–M

Aviation; Agreements

Aviation Proceedings; Agreements filed during the Week Ended November 11, 1994.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49881.
Date filed: November 8, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1624 dated November 1, 1994, Expedited South Atlantic-Europe/Mideast Reso 002u (Summary attached.).
Proposed Effective Date: expedited January 1, 1994.

Docket Number: 49882.
Date filed: November 8, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 06678 dated November 4, 1994, Expedited Europe-Southwest Pacific Resos, r-1-003t, r-2 015v, r-3- 071gg, r-4-079dd.
Proposed Effective Date: expedited January 1, 1995.

Docket Number: 49891.
Date filed: November 10, 1994.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Telex Mail Vote 717, Japan/Korea-Brunei fares r-1 to r-4, Intended effective date: December 2, 1994.
TC2 Telex Mail Vote 718, Europe-Western Africa fares r-5, Intended effective date: December 15, 1994.

Docket Number: 49892.
Date filed: November 10, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0659 dated September 23, 1994, Europe-South Asian Subcontinent Resos r-1 to r-15.
Proposed Effective Date: January 1, 1995.

Docket Number: 49893.
Date filed: November 10, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/P 0120 dated November 8, 1994, North/Mid/South Atlantic Expedited Resos, r-1–002t, r-2-015v.
Proposed Effective Date: January 1, 1995.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–28593 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation; Certificates

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended November 11, 1994. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49876.
Date filed: November 7, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 5, 1994.
Description: Application of Rio Air Express, S.A. d/b/a Skyjet Brasil, pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing Skyjet Brasil to perform passenger charter service between Brazil and the United States.

Docket Number: 49885.
Date filed: November 9, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 7, 1994.
Description: Application of Austrian Airlines, pursuant to 49 U.S.C. Section 41301, and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to the extent necessary to authorize Austrian to engage in scheduled foreign air transportation of persons, property, cargo and mail between: (1) a point or points in Austria and Washington, D.C., via the intermediate point or Geneva, Switzerland, and (2) a point or points in Austria and Atlanta, Georgia.

Docket Number: 49890.
Date filed: November 10, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 8, 1994.
Description: Application of Northern Air Cargo, Inc., pursuant to 49 USC 41108, and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 596, authorizing it to engage in scheduled foreign air transportation of property and mail between the terminal point Anchorage, Alaska and the coterminal points Magadan and Khabarovsk, Russia.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–28592 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Monroe and Greenbrier County, WV, Giles County, VA

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 involving about 52 miles of US 219 and extending from US 460 in the south to 3.5 miles north of I–64 in the north. A 2-mile length of US 219 from the Rich Creek junction with US 460 to the state line is in Giles County, Virginia. The remaining section of US 219 is in Monroe County and Greenbrier County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Bobby W. Blackmon, Acting Division

Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone: (304) 347–5929, or Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, Room A–830, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Department of Highways (WVDOH), will prepare an Environmental Impact Statement (EIS) for a proposed highway improvement to US 219 expanding the existing two-lane roadway to a four-lane, controlled access highway. Most of the 52-mile highway improvement will occur in West Virginia, with a 2-mile section at the southern end extending into Virginia.

The intent of the project is to improve access in the project area where US 219 serves as the primary north-south route through major population concentrations, business centers, and recreation areas in the eastern portion of West Virginia. Also, the roadway comprises the southernmost segment of the 540-mile long "Seneca Trail International Highway," as US 219 is presently known. This highway proceeds from the Canadian border at Buffalo to Virginia, linking with interstate highways to all mid-Atlantic and southeastern states. Following implementation of the US/Canada and North American Free Trade (NAFTA) Agreements, increasing trade and tourist traffic is expected, which could promote economic expansion in adjacent depressed areas of Appalachia.

Present roadway deficiencies in the proposed project area include sections with poor geometric design, lack of sight distance, poor level of service, restrictive speed limits, and a lack of passing opportunities. These functional, operational, and physical deficiencies compel this action.

Project alternatives will involve the No-Action Alternative and a combination of Build Alternatives.

The EIS will assess the alternatives and their environmental effects through detailed studies of socioeconomic, natural, visual, and cultural resources; air quality; noise impacts; secondary and cumulative effects; energy utilization; hazardous wastes; utilities; and permitting. Joint development prospects, congestion management, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action will be determined.

A Plan of Study describing the proposed action and soliciting comments will be forwarded to appropriate Federal, State, and local agencies. Agencies will be invited to attend a scoping meeting where aspects of the proposed action will be discussed. When completed, the draft EIS will be provided for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA or West Virginia Department of Transportation at the addresses provided.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: November 8, 1994.

Bobby W. Blackmon,

Acting Division Administrator, Charleston, West Virginia.

[FR Doc. 94–28656 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–22–M

Participation in the Intelligent Transportation Systems (ITS) Field Operational Test Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for participation.

SUMMARY: The DOT seeks offers from the public and private sectors to form partnerships to conduct operational tests in support of the national Intelligent Transportation Systems (ITS) program. This notice solicits offers to participate in operational tests that concentrate on evaluating the benefits of the following ITS user service areas: (1) International Border Electronic Clearance; (2) Automated Collision Notification; and (3) Intelligent Cruise Control.

The intent of this notice is to assess, using the selection criteria set forth below, a proposed operational test's potential for contributing to the advancement of the national ITS program, the proposed technical and management approaches for the test, and the appropriateness of the proposed Federal role in the project. The selection criteria set forth in today's notice supersede the criteria presented in previous operational test notices. This notice has been developed by the FHWA in cooperation with the National Highway Traffic Safety Administration (NHTSA), the Federal Transit Administration (FTA), and the Research and Special Programs Administration (RSPA).

DATES: Operational test offers must be received on or before February 19, 1995

ADDRESSES: Offers to participate in the ITS operational test program should be submitted directly to the Federal Highway Administration, Office of Traffic Management and ITS Applications, Operational Test Division (HTV–20), 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. George Schoene, Office of Traffic Management and ITS Applications, Operational Test Division, HTV–20, (202) 366–6726; Mr. Steve Crane, Intelligent Transportation System/Commercial Vehicle Operations Team, HMT–10, (202) 366–0950; or Ms. Julie Dingle, FHWA Office of the Chief Counsel, HCC–32, (202) 366–0780. For NHTSA: Mr. August Burgett, NHTSA Office of Crash Avoidance Research, NRD–50, (202) 366–5672. For FTA: Mr. Denis Symes, FTA Office of Technical Assistance and Safety, TTS–30, (202) 366–0232. All of the agencies are located at 400 Seventh Street SW., Washington, D.C. 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., for the NHTSA are from 7:45 a.m. to 4:15 p.m., e.t., for the FTA are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The ITS program involves a range of advanced technologies and system concepts that, when used in combination, can improve mobility and transportation productivity, enhance safety, maximize the use of existing transportation facilities, conserve energy resources, and reduce adverse environmental effects. These goals contribute significantly to the DOT's broader goal of developing a national intermodal transportation system for moving people and goods in a safe and energy-efficient manner. The "Department of Transportation's Intelligent Vehicle-Highway Systems (IVHS) Strategic Plan" (DOT Publication No. FHWA–SA–93–009) describes DOT's goals, objectives, and program delivery plans for research and development, operational testing, deployment, and long-term ITS development under the Automated Highway System program.

Operational tests serve as the transition between research and development (R&D) and full scale deployment of IS technologies. An operational test integrates existing technology, R&D products, institutional, and perhaps regulatory arrangements to test one, and usually more, new technological, institutional, or financial elements in a real world test. The tests permit an evaluation of how well newly developed ITS technologies work under real operating conditions and assess the benefits and public support for the product or system. Operational tests are conducted in a "real world" operational highway environment under actual transportation conditions. This distinguishes operational tests from research projects or other kinds of testing, for example simulation testing, test tracks, or tests on facilities that are temporarily closed to the public.

ITS operational tests are conducted as cooperative ventures between the DOT and a variety of public and private partners, including State and local governments, private companies, and universities. The "Department of Transportation's IVHS Strategic Plan" summarizes the roles of each participant in the National ITS Program and operational tests. The general Federal role is to act as a leader and a catalyst, and to ensure adequate emphasis on public benefits. The DOT also guides the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale. The participating DOT administrations, the FHWA, the NHTSA, the FTA, and the RSPA are involved in ITS and their specific ITS program needs will tailor the particular arrangements of the operational tests.

The DOT is also developing a National ITS Program Plan which will build on and expand the "Department of Transportation's IVHS Strategic Plan," providing the detailed "road map" required to both plan and track progress toward deploying systems and technologies that support user services of the ITS program.

The Program Plan is being developed based on the following set of ITS User Services:

1.0 Travel and Traffic Management
- 1.1 Pre-Trip Travel Information
- 1.2 En-route Driver Information
- 1.3 Route Guidance
- 1.4 Ride Matching and Reservation
- 1.5 Traveler Services Information
- 1.6 Traffic Control
- 1.7 Incident Management
- 1.8 Travel Demand Management

2.0 Public Transportation Management
- 2.1 Public Transportation Management
- 2.2 En-route Transit Information
- 2.3 Personalized Public Transit
- 2.4 Public Travel Security

3.0 Electronic Payment
- 3.1 Electronic Payment Services

4.0 Commercial Vehicle Operations
- 4.1 Commercial Vehicle Electronic Clearance
- 4.2 Automated Roadside Safety Inspections
- 4.3 On-Board Safety Monitoring
- 4.4 Commercial Vehicle Administrative Processes
- 4.5 Hazardous Material Incident Response
- 4.6 Commercial Fleet Management

5.0 Emergency Management
- 5.1 Emergency Notification and Personal Security
- 5.2 Emergency Vehicle Management

6.0 Advanced Vehicle Safety Systems
- 6.1 Longitudinal Collision Avoidance
- 6.2 Lateral Collision Avoidance
- 6.3 Intersection Collision Avoidance
- 6.4 Vision Enhancement for Crash Avoidance
- 6.5 Safety Readiness
- 6.6 Pre-crash Restraint Deployment
- 6.7 Automated Vehicle Operation

The Program Plan will include estimated milestones for each user service which will form the basis for selecting an area for operational tests. Several notices may be issued during the year to solicit specific operational tests based on milestones established for each user service, as will be outlined in the National ITS Program Plan, when completed.

To obtain a copy of the latest draft of the ITS National Program Plan, please provide a self-addressed label to: Federal Highway Administration, HTV–10, 400 Seventh Street SW., room 3400, Washington, DC. 20590. Additionally, a brief synopsis of existing operational tests is provided in a publication titled "Intelligent Vehicle Highway Systems (IVHS) Projects, March 1994" (DOT Publication No. HTV–10/4–94(7M)QE). To obtain a copy, please provide a self-addressed label to: Federal Highway Administration, HTV–20, 400 Seventh Street SW., room 3400, Washington, DC. 20590.

Proposed Operational Tests

The information below further describes the operational tests needed in the identified focus areas. It is the DOT's intention to fund offers in these areas. These are listed in order of the user service numbering sequence identified in the program plan.

1. International Border Electronic Clearance (Commercial Vehicle Electronic Clearance—User Service 4.1)

An operational test is needed to evaluate strategies to facilitate the movement of commercial traffic at highway crossings along the United States-Mexico border. This test would involve the development of electronic credentials and records that could be used to automatically verify the identity of the shipper, and the nature of the cargo, check carrier safety and credential records. The purpose of this test is to extend the electronic clearance concept for State border crossings to the Mexican border and support the North American Free Trade Agreement (NAFTA). By working with Mexico, a more efficient traffic flow could be provided at border crossings and the deployment of technologies in this country could ultimately prevent overweight, unsafe, or improperly registered vehicles from entering the United States.

The development of this test, while based on advanced technologies, will be dependent on the resolution of a number of legal, technical, and institutional issues. The test will also have to address specialized enforcement and cargo issues associated with crossing national borders. Automating the international border crossing process will require the involvement and cooperation of the immigration and customs organizations of the countries as well as shippers, carriers, local officials from the border States and provinces, and other relevant parties. While the general framework for this concept might be the same for crossings along the border, specific system designs will have to accommodate the variations in border crossing, laws, and language.

The DOT is committed to accelerating testing activities in the area of International Border Electronic Clearance to provide early deployment successes in support of the NAFTA and other related ITS activities. Proposals submitted should reflect this commitment with realistic, aggressive time schedules and completion dates.

2. Automated Collision Notification (Emergency Notification and Personal Security—User Service 5.1)

An operational test is needed to evaluate the improvements in safety and efficiency of emergency services offered by systems that provide automatic notification of automobile collisions. In automobile crashes involving life-threatening injuries, time is the most critical factor in saving lives, therefore,

rapid notification and response by Emergency Medical Service (EMS) personnel is a necessity.

The primary goal of automatic collision notification is to reduce these times for medical assistance in those incidents involving serious injury, where the occupants of the vehicle are incapacitated and unable to notify authorities on their own.

The operational test will include an in-vehicle collision notification system which would determine that a serious collision has occurred, and then automatically transmit information about the occurrence of the collision to the proper authorities. This system should have the capability to accurately sense vehicle location, to sense that the vehicle has been in a collision, and ideally to provide additional information with regard to the severity of the collision and/or likely injuries. A report by The Johns Hopkins University Applied Physics Laboratory ("Technology Alternatives for an Automated Collision Notification System," January 1994, publication no. FS–94–008, available from Mr. Ray Yuan at (301) 953–6356) provides background on alternative technologies for crash sensing, communicating the crash occurrence, and fixing the position of a crash.

The NHTSA will contract with an independent party who is not a member of the partnership to conduct the independent evaluation of this operational test. The offeror, however, should address those selection criteria (listed below) involving scheduling, funding, and responsibilities of members of the partnership in the conduct of the evaluation. The proposal should also discuss how the partners will address the protection of the rights and welfare of participants as spelled out in NHTSA Order 700–1. Persons wishing to obtain a copy of NHTSA Order 700–1 are directed to the NHTSA individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

3. Intelligent Cruise Control (Longitudinal Collision Avoidance—User Service 6.1)

An operational test is needed to evaluate improvements in safety offered by Intelligent Cruise Control (ICC) systems. The operational test should include appropriate number of vehicles with an in-vehicle ICC system which would control vehicle speed and headway and should not require active communications from other vehicles or roadside equipment. This system should, at a minimum, have the capability to sense distance and relative velocity of other vehicles, accurately control vehicle speed and headway, and to disregard vehicles in adjacent lanes.

The primary purpose of ICC systems is a higher level of convenience than is normally offered with standard cruise control, however these systems have the potential for decreasing the number and severity of rear end collisions. The evaluation will address both aspects of ICC. The proposal should discuss how the partners will address the protection of the rights and welfare of participants as spelled out in NHTSA Order 700–1. Persons wishing to obtain a copy of NHTSA Order 700–1 are directed to the NHTSA individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Proposed Nontechnical Activity Areas

The operational test program provides an ideal opportunity to assess major institutional and legal challenges inherent in implementing ITS. The DOT is interested in working with several of the selected partnerships to evaluate new approaches that: (1) Speed up the process for executing an ITS partnership agreement; (2) provide for innovative procurement methods; or (3) provide for innovative financing strategies. Specifically, the DOT's support may include:

- Administrative assistance to facilitate initial cooperation and communication among the project participants during the preagreement process. The intent is to involve all project participants, including contractors and subgrantees, as well as contract, technical, and legal staff of the project partners.
- Funding assistance to State and local governments to conduct innovative procurements and expedite the procurement process, particularly for complex, highly technical systems, in connection with the test. This assistance may include development of an acquisition plan, preparing statements of work and other contract documents.
- Funding assistance for the legal and consulting services and other costs necessary to implement new funding approaches, such as user fees, franchise fees, or use of venture capital to leverage private investment in ITS.

Interested offerors are requested to indicate their willingness to participate in any of these initiatives and provide additional information to support the decision for selection.

Evaluation

Evaluation is an integral part of each operational test and critical to the success of the National ITS Program. The DOT Operational Test Evaluation Guidelines, dated November, 1993, provides information on established guidelines and methodology for the evaluation of operational tests. Persons wishing to obtain a copy of the DOT Operational Tests Evaluation Guidelines are directed to the first FHWA individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

The evaluation guidelines, that shall apply to all operational tests funded in whole or part with Federal ITS funds, are as follows:

1. Individual operational tests will be structured within and have objectives which are consistent with the DOT's Program Plan for ITS. This will guide the development of the evaluation goals of each operational test.

2. The DOT will perform the role of evaluation coordinator for all operational tests. As evaluation coordinator, the DOT or its agent will work with the other partners in establishing individual test objectives, including the national, as well as local, goals and objectives that must be addressed during the evaluation; in developing the overall evaluation plan and the detailed experimental design; and in conducting the actual evaluation.

3. The DOT will conduct the evaluation or require that it be conducted by an independent party who is not a member of the partnership responsible for the operational test. The DOT reserves the right to conduct any additional evaluation deemed necessary to satisfy the national objectives of the ITS Program. Where the evaluation is conducted by a party retained by the non-Federal partners, the DOT shall retain approval authority to ensure the evaluation is acceptable and unbiased.

4. The ITS Partnership Agreement or other documents used to establish the operational test and funding arrangements between the DOT and the other partners will include language to require that an evaluation plan be prepared in the early phases of the operational test. There will also be language in all the agreements that incorporates the provisions of these guidelines.

5. The operational test funding plan shall separately account for the evaluation phase. Funds identified for the test evaluation shall not be spent for other portions of the operational tests. The DOT shall negotiate with the other partners during the initial operational test definition to ensure an adequate estimate of the funding necessary to meet the national evaluation objectives.

6. Funding to proceed with detailed systems design and implementation for

the operational test shall not normally be provided until an evaluation plan has been approved by the DOT. Subsequent approval stages will be specified in the ITS Partnership Agreement to ensure adequate development of the test and its evaluation. Funding for each test may be provided incrementally to allow for the adequate completion of each of the defined milestones.

7. Nothing in these guidelines shall preclude the non-Federal partners from conducting additional evaluations for their specific needs. The non-Federal partners are expected to be involved in specific phases of the evaluation. At a minimum, the non-Federal partners are expected to be part of the process to develop the goals and objectives of the test and the overall evaluation plan. These partners will also be involved in much of the technical, legal, and institutional data collection, archiving, and reporting.

8. The DOT reserves the right to require that additional data be collected and made available to allow the DOT to make comparative analyses with similar functions or features associated with other national operational tests.

In all tests, an independent and comprehensive test evaluation must be undertaken. The offer should indicate how the independent evaluation will be accomplished and include an estimate of the evaluation cost. Once the operational test project is underway, the independent evaluator should be brought into the process just before or, at the latest, during the development of the detailed evaluation work plan.

Partnership

An ITS operational test will typically involve a carefully crafted partnership that is negotiated among Federal, State, local, private, and other institutions. A partner is an entity that participates directly in the preparation of the operational test offer and plays a substantial role in defining the scope of the operational test, technologies included, and financial participation. Management of the operational tests, including funding, technical and administrative responsibilities, is shared among the partners in the operational test. Although an independent evaluator is not considered a formal member of the partnership, the offer can identify a proposed independent evaluator.

Potential private sector partners in ITS operational tests are encouraged, when appropriate, to work with appropriate State and local transportation agencies or other public sector organizations in the preparation of proposed cooperative ventures. Partners are also strongly encouraged to seek participation from certified Minority Business Enterprise firms, Women Business Enterprise firms, Disadvantaged Business Enterprise firms, Historically Black Colleges and Universities, Hispanic Serving Institutions, and other minority colleges. Offerors are also encouraged to seek opportunities that provide for the use of existing defense and space technologies for ITS applications.

Funding

In accordance with § 6058 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, 105 Stat. 1914, 2194, the maximum share of an operational test funded from Federal funds, including ITS funds, cannot exceed 80 percent. The remaining 20 percent must be from non-federally derived funding sources and must consist of either cash, substantial equipment contributions which are wholly utilized as an integral part of the project, or personnel services dedicated full-time to operational test purposes for a substantial period, as long as these staff are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. In an ITS partnership, as with other DOT cost-share contracts, it is inappropriate for a fee or profit to be included in the proposed budget. This prohibition on the inclusion of a fee or profit applies to all partners to the proposed operational test. This does not prohibit appropriate fee or profit payments to vendors or others which may provide goods or services to the partnership. For example, equipment vendors, software providers, and entities retained for comprehensive operational test evaluation purposes would not be subject to this prohibition.

The DOT, the Comptroller General of the U.S., and, if appropriate, the States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the operational test to substantiate these costs. This includes items such as direct labor, fringe benefits, material costs, consultant costs, subcontractor costs, and travel costs.

In order to maximize available Federal ITS dollars and be consistent with agency policy, prospective partners are encouraged to increase their cost share to 50 percent. Additional funds provided over the required 20 percent minimum may come from a variety of funding sources and may include the value of federally-supported projects directly associated with the ITS operational test.

Funding levels vary significantly between operational tests and are primarily based on size, complexity, and funding commitment by each of the partners. Federal ITS funding for the operational tests selected from the open solicitation in FY 1993 and FY 1994 ranged from $200,000 to $5.5 million, with most of the tests falling in the $1 to $2 million range.

Operational Test Offer Preparation

An offer to participate in the operational test program should contain sufficient information to enable an evaluation of the offer based on the selection criteria set forth below.

The offer shall not exceed 50 pages in length including title, index, tables, maps, appendices, abstracts, and other supporting materials. A page is defined as one side of an 8½ by 11 inch paper, with a type font no smaller than 12 point. Offers greater than 50 pages will not be accepted. Ten copies plus an unbound reproducible copy of the offer shall be submitted. The cover sheet or front page of the offer should include the name, address, and phone number of an individual to whom correspondence and questions about the offer may be directed.

The offer should contain details regarding the operational test schedule and budget. The schedule should show major milestone events including evaluation phases. The budget should show the requested Federal ITS funding and proposed partnership match funding (for FY 1995 and future years) by the activities shown on the table below. The matching funds should be further divided into public and private contribution amounts on the table as well as the source and type of contribution described in the proposal.

Activities	FY 1995 amount		Total amount		Description of contribution	
	Federal ITS funds	Matching funds	Federal ITS funds	Matching funds	Public	Private
Design						
Development						
Implementation						
Operation/Maintenance						
Evaluation						
Project Management						
Total						

In addition, the budget should include the following:

1. Detailed costs for the major operational test components such as operational test management, hardware and software design, technical development and integration of project elements, installation and start up, operation and maintenance for the duration of the evaluation, data collection, analysis and evaluation, and reporting.

2. Summarized costs which show the value of the resources needed for fiscal year (FY) 1995 as well as future years under the following three categories: Federal ITS funds, other public funds, and private funds.

Review Process

A formal review process has been established to evaluate responses to this notice soliciting participation in the ITS operational test program. The Office of Traffic Management and ITS Applications, ITS Operational Test Division, of the FHWA is responsible for coordinating the formal review and selection with representatives from the FHWA, FTA, NHTSA, RSPA, and the Office of the Secretary of Transportation. Representatives from the DOT modal administrations with expertise in key technological or program areas will serve on a technical review team(s). The technical review team(s) will perform a detailed review of the offer based on requirements of this solicitation and the following selection criteria.

Selection Criteria

The selection criteria set forth below supersede the criteria presented in the previous operational test notices dated May 8, 1992 (57 FR 19959), July 20, 1992 (57 FR 32047), and September 8, 1993 (58 FR 47310).

1. Relationship to National Program

The Operational Test offer of participation shall:

(a) Directly support the national goals and milestones of the user service areas described in this solicitation;

(b) Advance the development and eventual implementation of the proposed technology or system. Demonstrate that there is an acceptable basis for believing that the technologies being tested will ultimately be successfully deployed or implemented;

(c) Have meaningful, distinguishable features involving technical, institutional, market, or other important characteristics which have not been addressed in operational tests to date. Operational tests should not replicate past or current tests unless such replication provides a significant contribution to advancing the ITS program;

(d) Fit within a logical evolution of the ITS program and supporting technology; and

(e) Provide an approach that is technically feasible and responsive to the requirements of the user service area.

2. Evaluation

In concert with the evaluation guidelines stated earlier, the Operational Test offer of participation shall:

(a) Identify initial evaluation goals and objectives at the national and local level. These goals and objectives should reflect those activities required to move toward the national goals and milestones outlined in the "Department of Transportation's IVHS Strategic Plan". The evaluation goals and objectives should address, as a minimum, institutional issues, user acceptance, system benefits, costs, performance of the system, and impacts on the transportation system, including air quality;

(b) Provide a general evaluation work plan that outlines the scope and method of evaluation of each goal and objective and an assessment of the opportunity to collect the necessary data that can answer questions of both local and national significance;

(c) Provide for selection of an independent evaluator to ensure an unbiased evaluation of the operational test. The evaluator's responsibilities should be identified in the offer; and

(d) Provide estimated overall costs for conducting the evaluation. The costs of data collection and evaluation should be identified as separate items.

3. Project Management and Proposed Partnership

The Operational Test offer of participation shall:

(a) Provide an overall level of confidence that the test will be successfully completed by:

(1) Demonstrating an acceptable level of commitment, management capability, and business reliability of the partners.

(2) Demonstrating that there is a commitment by all partners to a national technology sharing effort and a willingness to dedicate the time and effort required to share the technical and institutional results of the test with others.

(3) Clearly defining the roles and responsibilities of the principal partners and staff and demonstrating that they have the ability to perform their assigned responsibilities. For large or complex tests, an experienced systems manager to support the project is desirable.

(b) Provide sufficient background to validate the accuracy of the cost and schedule estimates for the operational test;

(c) Minimize any potential negative effects of the test and demonstrate an awareness of and approach for dealing with complicating technical or institutional factors which might adversely affect the test. Innovative or technically challenging ways for dealing with these factors will be of particular interest;

(d) Identify the proposed agreements for sharing of technology developed under this operational test; and

(e) Identify long range plans for full scale deployment of the technologies when the operational test has been successfully completed.

4. Suitability of the Test Site, Vehicle Fleet, and Infrastructure

The Operational Test offer of participation shall:

(a) Demonstrate that the operational test is part of a continuing, ongoing transportation management program or that there is a good opportunity for components of the operational test to evolve into operational systems after the testing is completed;

(b) Demonstrate that the size and characteristics of the test and site are adequate for meaningful evaluation of the proposed system or technology and that the test and site have the operational or environmental characteristics to challenge the performance, reliability, and durability of the product or prototype being evaluated;

(c) Ensure that local public transportation services are in place to provide a valid market test of the operational test technology and that the local public transportation providers are interested in the adoption of new technologies;

(d) Provide the opportunity to evaluate the safety and air quality benefits of systems or operations where such issues are important considerations; and

(e) Ensure adequate records to support the project evaluation with regard to operation, reliability, costs, institutional issues, and maintenance of the device or system being tested.

5. Non-Federal Partners' Role

The Operational Test offer of participation shall:

(a) Clearly state who will be the principal staff dedicated to the operational test by partner(s) and indicate the amount of time each staff member is expected to devote to the test; and

(b) Ensure non-Federal contributions shown are allowable costs according to the cost principles in OMB circulars A–21, A–87 or A–122 or 48 CFR Part 31, as applicable to the organization incurring the costs. Cost share arrangements should show enough detail to determine whether the resources being committed to the potential project are sufficient to ensure successful completion. Letters from all participants committing themselves to the project and specifically stating their financial commitment should be included with the offer.

6. Federal Role

The Operational Test offer of participation shall:

(a) Demonstrate that the Federal government role in the operational test is consistent with the Department's statutory role and responsibilities;

(b) Provide for Federal participation in the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale;

(c) Show that the proposed Federal ITS contribution to the operational test is consistent with the agency's ITS operational test funding policy and appropriate to the type and scope of the test;

(d) Demonstrate that Federal ITS funds are not being used when regular Federal-aid, State, or private funds can and should be used or where the primary benefit of the operational test is in areas of private sector responsibility; and

(e) Demonstrate that Federal participation in the proposed test is an appropriate use of the Federal Government's resources.

Negotiation and Approval Process

Final approval and announcement of the selected offers are expected to take several months from the date the offers are received. For those offers selected, the lead DOT agency will begin negotiations with the project partners to reach mutually agreeable terms for an ITS operational test, including financial and technical issues. The negotiations will result in a funding agreement that documents project tasks, roles of partners, a budget, and a schedule for project execution and evaluation. The funding agreement between the DOT and the partnership is arranged through one non-federal partner, typically a State agency, who then serves as the lead for all funding agreements among the partners. Other non-federal partners, including local governments, universities, and the private sector, could also serve as lead.

Only upon successful completion of these negotiations would a partnership be formed. The funding agreement considers the partners of an operational test to be independent contracting parties, and not business partners for the purposes of sharing profits and losses.

(Secs. 6051 through 6059, Pub. L. 102–240, 105 Stat. 1914, 2189–2195; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 14, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–28599 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

Amendment to Notice of NHTSA Industry Meetings

This notice refers back to the **Federal Register** Notice, Vol. 59, No. 217/ Thursday, November 10, 1994, Page 56106. Please take note, the Industry Meetings referred to in this notice have been given two different room numbers. The Industry Meetings on December 20 and December 21, 1994 will be held at the Department of Transportation, 400 7th Street SW., Washington, DC in Room 2230 not 4436–40.

Issued: November 15, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–28591 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–91; Notice 1]

Receipt of Petition for Decision That Nonconforming 1989 Toyota Land Cruiser Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1989 Toyota Land Cruiser multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1989 Toyota Land Cruiser MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 21, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1989 Toyota Land Cruiser MPVs are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1989 Toyota Land Cruiser MPV that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Toyota Land Cruiser MPV to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Toyota Land Cruiser MPV, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1989 Toyota Land Cruiser MPV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) Installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner claims that the non-U.S. certified 1989 Toyota Land Cruiser MPV is equipped with occupant restraints at each designated seating position that are identical to those found in its U.S. certified counterpart. These consist of combination lap shoulder belts which adjust by means of an automatic locking retractor in the two front seating positions and in the two outboard rear seating positions and a lap belt that adjusts by means of a manual adjusting device in the rear center seating position.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 1, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–28652 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–102; Notice 1]

Receipt of Petition for Decision That Nonconforming 1994 Porsche 911 Carrera 2-Door Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Porsche 911 Carrera 2-door passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Porsche 911 Carrera 2-door passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 21, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United Sates, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1994 Porsche 911 Carrera 2-door passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1994 Porsche 911 Carrera 2-door passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Porsche 911 Carrera 2-door passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Porsche 911 Carrera 2-door passenger car, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Porsche 911 Carrera 2-door passenger car is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence (* * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1994 Porsche 911 Carrera 2-door passenger car complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of a knee bolster to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard. The petitioner claims that the manual lap and shoulder belts installed on the vehicle bear the same part number as U.S.-model components.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW.,

Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 15, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–28653 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–101; Notice 1]

Receipt of Petition for Decision That Nonconforming 1991 Toyota Land Cruiser Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Toyota Land Cruiser multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Toyota Land Cruiser MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 21, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1991 Toyota Land Cruiser MPVs are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Toyota Land Cruiser MPV that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that is carefully compared the non-U.S. certified 1991 Toyota Land Cruiser MPV to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Toyota Land Cruiser MPV, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Toyota Land Cruiser MPV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*:

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps;

(b) Installation of U.S.-model front and rear sidemarker/reflector assemblies;

(c) Installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor;

(b) Installation of an ignition switch actuated seat belt warning lamp and buzzer.

The petitioner claims that the non-U.S. certified 1991 Toyota Land Cruiser MPV is equipped with occupant restraints at each designated seating position that are identical to those found in its U.S. certified counterpart. These consist of combination lap shoulder belts which adjust by means of an automatic locking retractor in the two front seating positions and in the two outboard rear seating positions and a lap belt that adjusts by means of a manual adjusting device in the rear center seating position.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 15, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–28654 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–91]

User Fee Protests

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice.

SUMMARY: The Customs Service is providing guidance to the public on procedures which should be followed when filing protests concerning the calculation, collection and demand for payment for user fees and other issues. This notice is intended to clarify procedures which should be followed by parties filing protests and provide information on the treatment Customs will give protests once they have been received.

FOR FURTHER INFORMATION CONTACT: David Kahne, Program Manager, User Fee Task Force, U.S. Customs Service (202) 927–0159.

SUPPLEMENTARY INFORMATION: At the present time, there exists a certain level of confusion regarding the filing and processing of protests concerning the calculation, collection and demand for payment resulting from audit findings of Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees, the Merchandise Processing Fee (MPF), and the Harbor Maintenance Fees (HMF). Protests concerning these user fees are being received at various Customs locations throughout the United States, and requests for guidance have been received from the public and Customs field managers as to where these protests should be filed and how Customs will process them.

Customs intends to amend Part 174 of Title 19, Code of Federal Regulations, to provide specific procedures for the filing of user fee-related protests. In the meantime, this notice is published to provide flexibility in the filing of protests, accommodate the public's desire for local accountability, and provide guidance as to Customs preference regarding where protests should be filed. In addition, Customs seeks to comply with the Court of International Trade decision rendered in *Norfolk and Western Railway Co.* v. *United States, et al.*, CIT Slip Op. 94–16 (Feb. 1, 1994), which held that user fee-related protests may be filed, in accordance with § 24.73, Customs Regulations (19 CFR 24.73) at Customs headquarters. Accordingly, while Customs will continue to accept user fee-related protests at headquarters, Customs feels it serves the convenience of the public as well as that of the government to show a level of flexibility on this issue and also accept protests filed in locations more convenient to the public. To this end, it is suggested that the guidelines below be followed.

I. Protests Concerning the Constitutionality of the Harbor Maintenance Fee on Exports

A. Place of Filing

Protests concerning the constitutionality of the Harbor Maintenance Fee (HMF) on exports should be sent to the U.S. Customs Service, National Finance Center, at the following address: Director, National Finance Center, U.S. Customs Service, 6026 Lakeside Blvd., Indianapolis, IN 46278, Attn: Revenue Branch, HMF Protest Team.

Only protests which specifically concern the constitutionality of the HMF should be sent to this address. HMF protests which do not concern the constitutionality of the fee, and protests relating to user fees other than the HMF, are not covered by this procedure. See below for additional guidance.

B. Form of Protests

HMF constitutionality protests may be filed on Customs Form 19, or in letter form, or in the form of statements of protest affixed or appended to Customs Form 349, Quarterly Summary Report. Each protest should reference an Employer Identification Number (EIN), Internal Revenue Service (IRS) number, Customs-assigned number, or Social Security Number (SSN).

C. Time of Filing

Protests which concern the constitutionality of the HMF on exports should be filed in accordance with 19 U.S.C. 1514 within 90 days after the date on which each quarterly payment is due.

HMF payments are due within 31 days following the end of each calendar quarter.

Example: A protest filed for the calendar quarter ending March 31 would be due no later than July 30 (end of quarter: March 31; HMF payment due within 31 days: no later than May 1; protest due within 90 days of payment date: no later than July 30).

D. Level of Specificity

User fee-related protests should be of a level of specificity and detail equivalent to that required by § 174.13, Customs Regulations (19 CFR 174.13). Details of the circumstances surrounding the calculation, collection, or demands for payment, as well as amounts of fees due and dates paid, should be included.

Protests received by the Customs Service which do not conform to the required level of specificity will be considered incomplete, and notices will be sent to protestants which describe the additional information required. Such protests will be held until 30 days following the date of the notice that the protest is incomplete, or until expiration of the 90-day period within which such protests may be filed (90 days from the dates that the fee payments are due), whichever is longer. During this time, protestants may submit the additional information. If the requested additional information is not received prior to the expiration of this period, protests will be denied on the grounds that they are incomplete.

II. Other User Fee-Related Protests, Including Other HMF Protests

A. Place of Filing

1. Protests of user fee collections, calculations or demands for payment:

a. Such protests should be filed with the district director of the district in which the protested fee collections, calculations, or demands for payment took place, or

b. The Director, National Finance Center (NFC), if the protest concerns an action initiated by the NFC.

2. Protests of demands for payment for non- or underpayment of fees resulting from audits conducted by the U.S. Government should be filed with the district director from whom the notice of audit findings was received. The notice will contain instructions for the filing of protests.

B. Form of Protests

User fee-related protests may be filed on Customs Form 19, or in letter form. Each protest should reference an Employer Identification Number (EIN), Internal Revenue Service (IRS) number, Customs-assigned number, or Social Security Number (SSN).

C. Time of Filing

1. Protests of user fee collections or calculations shall be filed in accordance with 19 U.S.C. 1514 within 90 days after the date on which the first notice of the collection or calculation is mailed, or within 90 days of liquidation or reliquidation, if applicable.

2. Protests of demands for payment resulting from findings by auditors of the U.S. Government of non- or underpayment of user fees should be filed in accordance with 19 U.S.C. 1514 within 90 days after the date of mailing of the demand for payment, or within 90 days of liquidation or reliquidation, if applicable.

D. Level of Specificity

User fee-related protests should be of a level of specificity and detail equivalent to that required by § 174.13, Customs Regulations (19 CFR 174.13). Details of the circumstances surrounding the calculation, collection, or demands for payment, as well as amounts of fees due and dates paid, should be included.

Protests received by the Customs Service which do not conform to the required level of specificity will be considered incomplete, and notices will be sent to protestants which describe the additional information required. Such protests will be held until 30 days following the date of the notice that the protest is incomplete, or until expiration of the 90-day period within which such protests may be filed (90 days from the dates that the fee payments are due), whichever is longer. During this time, protestants may submit the additional information. If this information is not received prior to the expiration of this period, protests will be denied on the grounds that they are incomplete.

E. Applications for Further Review

Applications for further review (AFRs) should be filed with the same Customs manager (district director or Director, NFC) with whom a user fee protest would be filed. AFRs should be filed within the same time period permitted for the filing of protests, i.e. within 90 days after the date on which the first notice of the collection or calculation is mailed, or within 90 days of liquidation or reliquidation, if applicable.

If a decision is made to deny a protest in whole or in part, copies of the AFR and the protest will be forwarded by the Customs manager directly to the Office of Regulations and Rulings for review.

III. Protests Already Filed

User fee-related protests of all types which have already been received by the Customs Service will be dealt with in accordance with the procedures outlined above, regardless of where they were originally filed. Timeliness of protests already received will be determined by the dates on which they were received by the offices to which they were originally sent.

Approved: November 15, 1994.

Samuel H. Banks,

Assistant Commissioner, Commercial Operations.

[FR Doc. 94–28588 Filed 11–18–94; 8:45 am]

BILLING CODE 4820–02–P

Bureau of the Public Debt

Privacy Act of 1974: Altered System of Records

AGENCY: Bureau of the Public Debt, Treasury.

ACTION: Notice of Altered System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of the Public Debt gives notice of an altered Privacy Act system of records, Personnel and Administrative Records—Treasury/BPD .001. In addition, one existing system of records, Treasury/USSBD .001, will be removed from Treasury's inventory of Privacy Act systems of records when this altered notice is effective.

DATES: Comments must be received no later than December 21, 1994. The proposed system of records will be effective January 3, 1995, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Office, Bureau of the Public Debt, Room 553, E Street Building, Washington, DC 20239–0001. Comments will be made available for inspection and copying in the Treasury Department Library. An appointment for inspecting the comments can be made by contacting the Library at (202) 622–0980.

FOR FURTHER INFORMATION CONTACT: Louise Bennett, Disclosure Office, Bureau of the Public Debt, Room 553, E Street Building, Washington, DC 20239–0001; Telephone (202) 219–3307.

SUPPLEMENTARY INFORMATION: This report is to give notice of an altered Bureau of the Public Debt system of records entitled, "Personnel and Administrative Records—Treasury/BPD .001," which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Bureau of the Public Debt is amending its present system of records covering personnel and administrative records for the following reasons:

(1) To cover categories of records added by new programs. An example is records covered by the Family Medical and Leave Act of 1993. Where records

are covered by another system of records, such as an Office of Personnel Management governmentwide system, those records are not covered here. An example is Official Personnel Folders.

(2) To more fully describe locations at which records are maintained.

(3) To show additional categories of individuals covered by the system of records.

(4) To show new and amended routine uses.

(5) To show additional categories of sources of records.

(6) To incorporate another system of records. The Savings Bonds Division has now been merged with the Bureau of the Public Debt. The Savings Bonds Division is no longer a separate Treasury component. Therefore, system of records Treasury/USSBD .001, Savings Bonds Employee Records System, is being incorporated into the Bureau of the Public Debt system of records Treasury/BPD .001, Personnel and Administrative Records. In accordance with OMB Circular A–130, Treasury/USSBD .001 will be deleted from the Treasury Department's inventory of systems of records. The notice for Treasury/USSBD .001 was last published at 57 FR 14134 dated April 17, 1992.

(7) To reflect the consolidation of Bureau of the Public Debt personnel and administrative offices and the shifting of most of these types of records to Parkersburg, West Virginia.

This system of records is limited to those records Public Debt needs to function in an efficient manner and does not cover those records reported under another system of records notice.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated July 15, 1994.

The Privacy Act system of records notice Treasury/USSBD .001, Savings Bonds Employee Records System, is removed.

The proposed altered system of records Treasury/BPD .001, Personnel and Administrative Records, is published in its entirety below.

Dated: November 14, 1994.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

Treasury/BPD .001

SYSTEM NAME:

Personnel and Administrative Records—Treasury/BPD.

SYSTEM LOCATION:

Records are maintained at the following Bureau of the Public Debt locations: 200 Third Street, Parkersburg, WV 26106; Park Center, 90 Park Center, Parkersburg, WV 26101; H.J. Hintgen Building, 2nd and Avery Streets, Parkersburg, WV 26102; 999 E Street NW., Washington, DC 20239; 300–13th Street SW., Washington, DC 20239; and 800 K Street NW., Washington, DC 20226. Copies of some documents have been duplicated for maintenance by supervisors for employees or programs under their supervision. These duplicates are also covered by this system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover present and former employees, applicants for employment, contractors, vendors, and visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following categories of records. This system of records is limited to those records Public Debt needs to function in an efficient manner and does not cover those records reported under another system of records notice.

(A) *Personnel Records: (1) Employee and Labor Relations Records.* These records relate to disciplinary and adverse actions, leave and hours of duty, alternate work schedules, standards of conduct and ethics programs, indebtedness, employee suitability and security determinations, grievances, performance problems, bargaining unit matters, Federal labor relations issues, relocation notices, and outside employment.

(2) *Employment and Classification Records.* These records relate to recruitment; placement; merit promotion; special hiring programs, including Summer Employment, Veterans Readjustment, Career Development for Lower Level Employees (CADE), Co-operative Education; position classification and management; special areas of pay administration, including grade and pay retention, premium pay, scheduling of work, and performance management and recognition.

(3) *Employee Development and Services Records.* These records relate to Public Debt's training and employee development programs, performance management programs, incentive awards, and benefits and retirement programs.

(4) *Personnel/Payroll Systems Records.* These records relate to personnel and payroll actions, insurance, worker's and unemployment compensation, employee orientation, retirement, accident reports, and consolidation of personnel/program efforts among offices.

(5) *Equal Employment Opportunity Records.* These are records of informal EEO complaints and discussions which have not reached the level of formal complaints. After 30 days these records are destroyed or incorporated in a formal complaint file. Formal complaints are handled by the Treasury Department's Regional Complaints Center. Copies of formal complaint documents are sometimes maintained by Public Debt's EEO Office.

(B) *Administrative Records:* (1) *Administrative Services Records.* These records relate to administrative support functions including motor vehicle operation, safety, access to exterior and interior areas, contract guard records, offense/incident reports, accident reports, and security determinations.

(2) *Procurement Records.* These records relate to contractors/vendors if they are individuals; purchase card holders, including the name and credit card number for employees who hold Government-use cards; procurement integrity certificates, containing certifications by procurement officials that they are familiar with the Federal Procurement Policy Act.

(3) *Financial Management Records.* These records relate to travel by employees and account information for vendors and contractors who are individuals.

(4) *Retiree Mailing Records.* These records contain the name and address furnished by Public Debt retirees requesting mailings of newsletters and other special mailings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

PURPOSES:

These records are collected and maintained to document various aspects of a person's employment with the Bureau of the Public Debt and to assure the orderly processing of administrative actions within the Bureau.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records and information in these records may be disclosed as a routine use to:

(1) The Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority upon authorized request;

(2) Other Federal, State, or local agencies, such as a State employment compensation board or housing administration agency, so that the agency may adjudicate an individual's eligibility for a benefit, or liability in such matters as child support;

(3) Creditors, potential creditors, landlords, and potential landlords when they request employment data or salary information for purposes of processing the employee's loan, mortgage, or apartment rental application (when information is requested by telephone, only verification of information supplied by the caller will be provided);

(4) Next-of-kin, voluntary guardians, and other representative or successor in interest of a deceased or incapacitated employee or former employee;

(5) Unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, arbitrators, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties;

(6) Private creditors for the purpose of garnishing wages of an employee if a debt has been reduced to a judgment;

(7) Authorized Federal and non-Federal entities for use in approved computer matching efforts, limited to those data elements considered necessary in making a determination of eligibility under particular benefit programs administered by those agencies or entities, to improve program integrity, and to collect debts and other monies owed to those agencies or entities or to the Bureau of the Public Debt;

(8) Contractors of the Bureau for the purpose of processing personnel and administrative records;

(9) Other Federal, State, or local agencies in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the issuance of a license, contract, grant, or other benefit;

(10) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(11) Other Federal agencies to effect salary or administrative offset for the purpose of collecting a debt, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies;

(12) Consumer reporting agencies, including mailing addresses obtained from the Internal Revenue Service to obtain credit reports;

(13) Debt collection agencies, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(14) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(15) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(16) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microform, and electronic media.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Records: Director, Division of Personnel Management, 200 Third Street, Parkersburg, WV 26106–1328.

Equal Employment Opportunity Records: Equal Employment Opportunity Manager, 200 Third Street, Parkersburg, WV 26106–1328.

Administrative Services Records: Director, Administrative Services Division, 200 Third Street, Parkersburg, WV 26106–1328.

Procurement Records: Director, Division of Procurement, 200 Third Street, Parkersburg, WV 26106–1328.

Financial Management, 200 Third Street, Parkersburg, WV 26106–1328.

Retiree Mailing Records: Director, Division of Data Services, 200 Third Street, Parkersburg, WV 26106–1328

NOTIFICATION PROCEDURE:

Individuals may submit their requests for determination of whether the system contains records about them or for access to records as provided under "Records Access Procedures." Requests must be made in compliance with the applicable regulations (31 CFR part 1, subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

RECORD ACCESS PROCEDURES:

(1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. If the individual is seeking access in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is seeking access by mail, identity may be established by presenting a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of

the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The request should be submitted to the appropriate office as shown under "System Managers and Addresses" above. The request must state whether the requester wishes to be notified that the record exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR 1.26(d)(2)(ii).

CONTESTING RECORD PROCEDURES:

(1) A request by an individual contesting the content of records or for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. If the request is made in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but instead showing a name and signature. If the request is made by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) The initial request should be submitted to the appropriate office as shown under "System Managers and Addresses" above.

(3) The request should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons.

(4) The request must include available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records:

(1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. If the individual is making an appeal in person, identity may be established by the presentation of a single official document bearing the individual's photograph or by the presentation of two items of identification without the photograph but showing a name and signature. If the individual is making an appeal by mail, identity may be established by the presentation of a signature, address, and one other identifier such as a photocopy of an official document bearing the individual's signature. The Bureau of the Public Debt reserves the right to require additional verification of an individual's identity.

(2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed to, or delivered personally to: Chief Counsel, Bureau of the Public Debt, 999 E Street NW., Room 503, Washington, DC 20239–0001 (or as otherwise provided for in the applicable appendix to 31 CFR part 1, subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction.

(3) An appeal must be marked "Privacy Act Amendment Appeal" and specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date the initial denial of the request for correction was received.

(4) An appeal must also specify the reasons for the requester's disagreement with the initial denial of correction and must include any applicable supporting evidence.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the subject of the record, authorized representatives, supervisors, employers, medical personnel, other employees, other Federal, State, or local agencies, and commercial entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–28673 Filed 11–18–94; 8:45 am]
BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 223
Monday, November 21, 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 Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, November 22, 1994, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, DC:

Memorandum and resolution re: Final amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage," which (1) require that certain written disclosures be made by insured depository institutions to employee benefit plan depositors in certain situations in order to reduce the uncertainty about whether such accounts are eligible for "pass-through" deposit insurance coverage and to provide a timely disclosure to such depositors when such coverage no longer is available; and (2) make two technical amendments to Part 330 involving the insurance rules for joint accounts and the accounts for which an insured depository institution is acting as a fiduciary.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 989–6757.

Dated: November 17, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–28851 Filed 11–17–94; 3:14 pm]

BILLING CODE 6714–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on November 7, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 5, 1994, in Tampa, Florida. The members will consider 1) an incentive compensation program; and 2) the Postal Rate Commission's Decision in Docket No. R94–1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552(c)(2) and (3) of Title 5, United States Code, and section 7.3(b) and (c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose 1) internal personnel practices; and 2) information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10 of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion of Docket No. R94–1 is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(2), (3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3(b), (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–28811 Filed 11–17 3:16 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed meetings.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Cancellation/Time Change.

The closed meeting scheduled for Thursday, November 17, 1994, at 3:30 p.m., was cancelled. The time for the closed meeting scheduled for Tuesday, November 22, 1994, at 10:00 a.m., has been changed to Tuesday, November 22, 1994, at 9:30 a.m.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 16, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–28812 Filed 11–17–94; 3:17 pm]

BILLING CODE 8010–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Friday, December 2, 1994, 9:15 a.m.–1:00 p.m.

LOCATION: Auditorium, National Education Association, 1201 16th Street, NW., Washington, DC 20005.

STATUS: (*Open Session*)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-seventh Meeting of the Board of

Directors; Chairman's Report; President's Report; General Issues; Grant and Fellowship Approvals.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: November 17, 1994.

Charles E. Nelson,

Vice President, United States Institute of Peace.

[FR Doc. 94–28751 Filed 11–17–94; 10:12 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 59, No. 223
Monday, November 21, 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.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50-93]

Foreign-Trade Zone 21--Dorchester County, South Carolina; Application for Expansion; Amendment of Application

Correction

In notice document 94-27916 appearing on page 56034, in the issue of Thursday, November 10, 1994, make the following correction:

On page 56034, in the second column, in the fourth paragraph, after the word "until" insert "December 27, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N-0214]
RIN 0905-AB63

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions

Correction

In rule document 94-24052 beginning on page 50338, in the issue of Monday, October 3, 1994, make the following correction:

§ 314.50 [Corrected]

On page 50361, in the second column, in § 314.50 (B), in the second line from the bottom, "505 (b)" should read "505(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 900

[Docket No. 93N—0351]

Quality Standards and Certification Requirements for Mammography Facilities

Correction

In rule document 94-24354 beginning on page 49808 in the issue of Friday, September 30, 1994, make the following corrections:

1. On page 49811, under the heading **Paperwork Reduction Act of 1980**, in the first table, "Estimated Annual Burden for Reporting," the citation "21 CFR 900.18" and the associated footnote 1 should be moved to appear immediately below the first citation, "21 CFR 900.11(b)(2)."

2. On the same page, under the same heading, in the second table, "Estimated Annual Burden for Recordkeeping," the citation "21 CFR 900.18" and the associated footnote 1 should be moved to appear immediately below the second citation, "21 CFR 900.12(e)(2)."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

RIN 0905-ZA80

Program Annoucement and Proposed Funding Preference for Centers of Excellence in Minority Health Professions Education--Fiscal Year 1995

Correction

In notice document 94-26997 beginning on page 54617 in the issue of Tuesday, November 1, 1994, make the following correction:

On page 54619, in the first column, under the heading **Additional Information**, in the first paragraph, "November 1, 1994" should read "December 1, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. 27890; Amendment No. 67-15]
RIN 2120-AF42

Medical Standards and Certification

Correction

In rule document 94-22207 beginning on page 46706, in the issue of Friday, September 9, 1994, make the following correction:

§ 67.25 [Corrected]

On page 46708, in the second column, in § 67.25 (b), in the eighth line, "an" should read "and".

BILLING CODE 1505-01-D

federal register

Monday
November 21, 1994

Part II

Department of Education

Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notices

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities.

SUMMARY: The Secretary announces final priorities for the Research in Education of Individuals with Disabilities Program. The Secretary may use these priorities in Fiscal Year 1995 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. The final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on December 21, 1994.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support: (1) To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn; and (2) for research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

On August 1, 1994, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (59 FR 39232–39234).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1995 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, six parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Examining Alternatives for Outcome Assessment for Children With Disabilities

Comment: One commenter suggested that the development of new assessment instruments should be accompanied by checks for reliability and validity.

Discussion: The purpose of the priority is to support research projects, not instrument development. The Secretary believes that the priority as written allows applicants to address technical characteristics such as reliability and validity among the possible research issues to be studied.

Changes: None.

Comment: One commenter expressed concern that old definitions of technical adequacy might be inappropriate for alternative forms of assessment.

Discussion: The priority as written does not specify what technical criteria should be applied to alternative assessments, but raises this question as one possible research issue. The Secretary prefers that applicants be given flexibility to propose the technical criteria to be applied to alternative assessments.

Changes: None.

Comment: One commenter suggested that Issue 4 "Including students with disabilities in general assessments" be expanded to include other forms of diversity such as cultural and racial backgrounds.

Discussion: As written, the priority's focus on students with disabilities is consistent with the authorizing statute. Applicants may add other forms of diversity to this focus as appropriate for their particular research issues.

Changes: None.

Comment: One commenter suggested that encouragement be given to collaboration of State and local educational agencies and universities.

Discussion: The organizations specified by the commenter are all eligible applicants under this program. Collaboration may or may not be appropriate for the type of research proposed. Applicants may develop collaborative arrangements as appropriate for their proposed program of research.

Changes: None.

Comment: One commenter suggested that the research issues listed in the priority be expanded to include issues focused specifically on accountability and issues related to professional skill and knowledge. Another commenter suggested that the list be expanded to include the issue of comparability of measures across different patterns of age, race, ethnicity, language, and migration status.

Discussion: The priority as written supports research on issues related to "outcome assessment and/or outcomes-based accountability for students with disabilities" that "include, but are not limited to" the issues listed in the priority. The list is intended to be illustrative and not exhaustive, and to include a range of assessment and accountability issues without being excessively complex and prescriptive. Applicants may certainly address important research issues which are not included on this list.

Changes: None.

Priority—Studying Models That Bridge the Gap Between Research and Practice

Comment: One commenter suggested that applicants should not be limited to the specific models mentioned in the background section and should be allowed to add or create models.

Discussion: The Secretary agrees that applicants should be allowed to add or create models. The models mentioned in the background section were meant only to serve as examples of the range of models. Applicants may study other existing models, such as teacher networking models, or use models they have created.

Changes: The Secretary has clarified the priority by revising the first two paragraphs under the "Priority" section so as to give applicants the option of creating models.

Comment: One commenter cited the priority as extremely important in making the final step between research findings and practice if research is to have meaning for students and teachers. The commenter suggested that the model testing involve a teacher training component in how to interpret and translate research findings into practice.

Discussion: The Secretary believes that the priority as written provides the potential to bridge the gap between research and practice and at the same

time allows applicants the flexibility to select or create a model with such a training component.

Changes: None.

Comment: One commenter suggested that the Department require applicants to develop approaches that use a broad body of content/strategies that inform both special and regular education. The commenter also suggested that the applicant be required to present the research supporting the effectiveness of the content to be implemented and the rationale for site selection. It was further suggested that the term "model" was not appropriate because it suggested something standardized rather than an approach that could be "* * * adapted and implemented to fit particular situations."

Discussion: The Secretary agrees that the approaches should be broad enough that they have potential implications for both special and general education. In fact, some of the models used as examples in the priority as written are based in regular education. The Secretary agrees that applicants should present the research literature supporting the effectiveness of the chosen approach and justify study sites, and notes that the selection criteria included in the application package address these issues. Further, judging the effectiveness of the implemented model is already a requirement of the priority. The Secretary believes that any further requirements would make the priority unnecessarily prescriptive.

Regarding the commenters concern on the use of the term "model", for the purpose of this priority, the term "model" is meant in its more generic sense of a design or approach, thus allowing the applicant flexibility in selecting and implementing a knowledge utilization model.

Changes: None.

Priority—Student-Initiated Research Projects

Comment: One commenter stated that those working in classrooms are asking questions of immediate importance and suggested that this priority be modified to "Teacher-Initiated Research Projects".

Discussion: The Secretary agrees that teachers are deserving of support, but notes that they are eligible to apply through their local educational agencies for awards under the Research in Education of Individuals with Disabilities Program. The Secretary believes that the priority as written is an important vehicle for attracting, promoting, and supporting potential new researchers on disability issues and is consistent with the student-initiated priority in the regulations at 34 CFR 324.10(c).

Changes: None.

Comment: One commenter recommended that the competitive preference for students who are members of groups that have been underrepresented in the field of special education research be limited to a maximum of 25% of the awards made within the competition. The commenter recommended a cap so that all eligible students believe the probabilities for competing are sufficient to warrant the investment in preparing a proposal.

Discussion: The Secretary believes that the priority as written, while encouraging applications from members of underrepresented groups in special education research, does not significantly discourage applications from other applicants. There is no intent in this priority to set aside a certain number or percentage of awards for applicants meeting the competitive preference.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary will fund under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Examining Alternatives for Outcome Assessment for Children with Disabilities

Background

Many students with disabilities are currently excluded from national, State, and local outcome assessments and outcomes-based accountability systems. This exclusion has the effect of weakening educational accountability, limiting educational opportunities for students with disabilities, and denying these students the potential benefits of educational reforms.

This problem is addressed in new Federal legislation, "The Goals 2000: Educate America Act." (Public Law 103–227, March 31, 1994). Section 220 of this Act supports development and evaluation of State assessments aligned with State educational standards, with a portion of the funds reserved for developing assessments for students with disabilities. Section 1015 calls for "a comprehensive study of the inclusion of children with disabilities in school reform activities assisted under * * * [the Act]." This study is to include "* * * a review of the adequacy of assessments and measures used to gauge progress towards meeting * * * [education goals and standards], and an examination of other methods or accommodations necessary or desirable to collect data on the educational progress of children with disabilities, and the costs of such methods and accommodations * * *". To support and complement such efforts, further research is needed on a variety of technical and implementation issues.

Priority

The Assistant Secretary establishes an absolute priority for research projects that—

(a) Pursue systematic programs of applied research focusing on one or more issues related to outcome assessment and/or outcomes-based accountability for students with disabilities. These issues include, but are not limited to:

(1) *Testing accommodations and adaptations.* When adaptations and accommodations are made to permit students with disabilities to participate in outcome assessments, how are the technical characteristics of the assessments affected? How can the results be interpreted? To what degree can these scores be aggregated with nonadapted assessments? What are the best methods for selecting appropriate accommodations and adaptations? How can testing accommodations be related to instructional accommodations?

(2) *Alternative assessments.* When alternative assessments (such as performance assessments or portfolio assessments) are provided for students with disabilities, how can these assessments be compared with conventional assessments? What technical criteria can appropriately be applied to these assessments when used with students with disabilities?

(3) *Development of assessments.* How can general educational assessments be developed to be more inclusive for students with disabilities? How can problematic items and item formats be identified? How can students with disabilities be adequately represented in test development and validation samples? What are the effects when tests developed for general populations are administered to students with disabilities?

(4) *Including students with disabilities in general assessments.* How should decisions be made and documented to include or exclude students with disabilities in general educational assessments or alternative assessments? What factors influence these decisions?

(5) *Standards and outcomes.* How can standards and outcomes be developed for diverse populations? How can their appropriateness be judged?

(6) *System development.* How can assessment and accountability systems be developed with the range and flexibility to accommodate diverse student populations? How can accountability and individualization both be maintained?

(7) *Basic concepts and principles.* How can basic concepts and principles in assessment be revised to reflect new approaches to assessment and new roles and challenges in outcome assessment for diverse populations?

(b) Produce and disseminate information that can be applied in educational programs, as well as in subsequent research; and

(c) Coordinate their activities, as appropriate, with the Center to Support the Achievement of World Class Outcomes for Students with Disabilities, and with other related projects funded under The Goals 2000: Educate America Act.

A project must budget for two trips annually to Washington, D.C., for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

For Further Information Contact: David Malouf, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3521, Washington, D.C. 20202–2641. Telephone: (202) 205–8111. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 2—Studying Models That Bridge the Gap Between Research and Practice

Background

Educational research most often includes the following phases: (1) planning and preparation; (2) information gathering; (3) analysis and interpretation; (4) reporting and dissemination; and (5) use of findings. In traditional research models, the researcher is solely or primarily responsible for all phases but the last. Using research findings is seen as a job for the practitioner. However, it has been observed that research knowledge rarely translates directly into practice.

In recent years, a variety of models have been developed to bridge the gap between research and practice by altering the roles of researchers and practitioners in the school district for one or more phases of the research. In some models (e.g., interactive research and development, teacher-researcher partnership research) researchers and practitioners collaborate in all phases of the research process. Some of these models include parents on their school-based teams. In other models, practitioners, working individually (e.g., teacher research linkers) or in groups (e.g., teacher study groups), or in pairs (e.g., peer coaching) interpret extant research to understand how to integrate research into practice. In some models, teachers conduct research (e.g., action research, collegial experimentation). To date there have been few systematic examinations of the effectiveness of these models to improve practice in special education.

Priority

The Assistant Secretary establishes an absolute priority for research projects to implement and examine a model(s) for using research knowledge to improve education practice and outcomes for children with disabilities.

In studying a model(s), projects must apply methodologies with the capacity to judge the effectiveness of the model(s) as implemented in practice settings. The projects must identify the knowledge utilization model(s) to be studied, specify the components of the knowledge utilization model(s) selected or created, the supports and policies necessary to support the model(s), both alterable and unalterable factors affecting practice improvement, and the effect of the model(s) to improve the school culture, teacher attitudes and practices, and student outcomes. In judging effectiveness, the projects must address improvements for researchers, practitioners, and children and youth with disabilities.

The projects must report their findings in a manner which can serve as a "blueprint" for practitioners and researchers in other school districts to implement the model using research knowledge to improve practice in special education.

A project must budget for two trips annually to Washington, D.C., for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

For Further Information Contact: Jane Hauser, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3521, Washington, D.C. 20202–2641. Telephone: (202) 205–8126. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 3—Student-Initiated Research Projects

This priority provides support for short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children and youth with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in 34 CFR 324.1.

Projects must—

(1) Develop research skills in postsecondary students; and

(2) Include a principal investigator who serves as a mentor to the student/researcher while the project is carried out by the student.

A project must budget for a trip to Washington, D.C. for the annual two-day Research Project Directors' meeting.

Competitive Priority: Within this absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(ii), will give preference to applications that meet the following competitive priority. An application that meets this competitive priority would be selected by the Secretary over applications of comparable merit that do not meet the priority:

A project that would give a priority to providing support for postsecondary students who are members of groups that have been underrepresented in the field of special education research, such as members of racial or ethnic minority groups (e.g. Black, Hispanic, American Indian, Alaskan Native, Asian, or Pacific Islander), and individuals with disabilities.

For Further Information Contact: Melville J. Appell, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3529, Washington, D.C. 20202–2641. Telephone: (202) 205–8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Applicable program regulations: 34 CFR Part 324.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program).

Dated: November 15, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–28582 Filed 11–18–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Applications Available: 12/21/94.

Priorities:

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

[Application notices for fiscal year 1995]

Title and CFDA number	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
Examining Alternatives for Outcome Assessment for Children With Disabilities (CFDA 84.023F).	2/24/95	$700,000	$175,000 per year[1]	4	Up to 36.
Studying Models That Bridge the Gap Between Research and Practice (CFDA 84.023G).	3/24/95	$700,000	$140,000 for the first year[1]	5	Up to 48.
Student-Initiated Research Projects (CFDA 84.023B).	2/24/95	$180,000	$15,000 for entire project period[2]	12	Up to 12.

[1] Amount listed is the estimated funding level for the first 12 months (year) of a project. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

[2] Amount listed is the estimated funding level for the entire project period (up to 12 months).

NOTE: The Department of Education is not bound by any estimates in this notice.

For Technical Information Contact

For information on the Examining Alternatives for Outcome Assessment for Children with Disabilities competition (CFDA 84.023F) please contact David Malouf, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3529, Washington, DC 20202–2641. Telephone: (202) 205–8111. For information on Studying Models that Bridge the Gap Between Research and Practice competition (CFDA 84.023G) please contact Jane Hauser, U.S. Department of Education, 600 Independence, SW., Switzer Building, Room 3521, Washington, DC 20202–2641. Telephone: (202) 205–8126. For information on the Student-Initiated Research Projects competition (CFDA 84.023B) please contact Melville J. Appell, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3529, Washington, DC 20202–2641. Telephone: (202) 205–8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact

Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3525, Washington, DC 20202–2641. Telephone: (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1441–1443.

Dated: November 15, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–28583 Filed 11–18–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
November 21, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) is correcting errors in the rule prescribing the late open season, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons in seven States that appeared in the **Federal Register** on October 3, 1994 (59 FR 50424).

EFFECTIVE DATE: Effective on September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the October 3, 1994, **Federal Register** (59 FR 50424), the Service published a final rule prescribing the late open season, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and certain other migratory bird seasons in the conterminous United States. The rule contained errors in the waterfowl season entries for Louisiana, Minnesota, Montana, North Dakota, Oklahoma, Kansas, and California, which are discussed briefly below and corrected by this notice.

Public comment was received on the proposed rules for the seasons and limits contemplated herein. These comments were addressed in the **Federal Register** dated August 17, 1994 (59 FR 42474) and September 27, 1994 (59 FR 49304). The corrections are typographical in nature and involve no change in substance in the contents of the prior proposed and final rules.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds published in the October 3, 1994, **Federal Register** (59 FR 50424).

§ 20.105 [Corrected]

1. On page 50434 under the heading *Louisiana*, subheading Geese, "White-fronted and Brant (3)" is corrected to read "White-fronted (3) and Brant."

2. On page 50438 under the heading *North Dakota*, the subheading Ducks should be followed by "(5):"

3. On page 50439 following footnote (4), footnote (5) is inserted and reads "In *North Dakota*, the daily bag limit may include no more than 1 wood duck."

4. On page 50439 under the heading *PACIFIC FLYWAY*, subheading *Flyway-wide Restrictions*, the Duck and Merganser Limits is corrected to read "A daily bag limit of 4 ducks (including mergansers) may include no more than 3 mallards but only 1 female mallard, 1 pintail, 2 redheads, and 1 canvasback. A daily bag limit of 5 ducks (including mergansers) may include no more than 4 mallards but only 1 female mallard, 1 pintail, 2 redheads, and 1 canvasback. The possession limit is twice the daily limit."

5. On page 50440 under the heading *Montana*, subheading Ducks, the season dates of "Dec. 7–Jan. 1" are corrected to read as "Dec. 17–Jan. 1."

§ 20.106 [Corrected]

1. On page 50442, following the heading *Kansas*, the heading *Oklahoma* is inserted; under the heading *Oklahoma*, season dates for sandhill cranes of "Oct. 15-Jan. 15" and daily bag and possession limits of "3" and "6" are inserted.

§ 20.109 [Corrected]

1. On page 50446 under the heading *Minnesota*, subheading Canada Geese, "Olmstead County" is corrected to read "Olmsted County."

2. On page 50446 under the heading *Minnesota* subheading "White-fronted Geese" is corrected to read "White-fronted Geese and Brant."

3. On page 50447, the headings *Missouri*, *Ohio*, and *Tennessee*, are corrected to be in the *Mississippi Flyway* not the *Central Flyway*.

4. On page 50447 under the heading *Central Flyway*, the heading *Kansas* is inserted above the heading *Montana*; under the heading *Kansas*, the subheading "Ducks, mergansers, and coots" and the subheadings "High Plains" and "Low Plains" are inserted; the extended falconry dates are then inserted for the High Plains of "Sept. 19–Oct. 14" and for the Low Plains of "Sept. 19–Oct. 21" following each respective zone.

5. On page 50449 under the heading *California*, subheadings Canada Geese, White-fronted Geese, Brant, and Light Geese, the Colorado River Zone and season dates are deleted.

Dated: November 9, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–28699 Filed 11–18–94; 8:45 am]

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§§ 1.908-1.1000	(869-022-00093-4)	27.00	Apr. 1, 1994
§§ 1.1001-1.1400	(869-022-00094-2)	24.00	Apr. 1, 1994
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300-499	(869-022-00100-1)	24.00	Apr. 1, 1994
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28 Parts:			
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29 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

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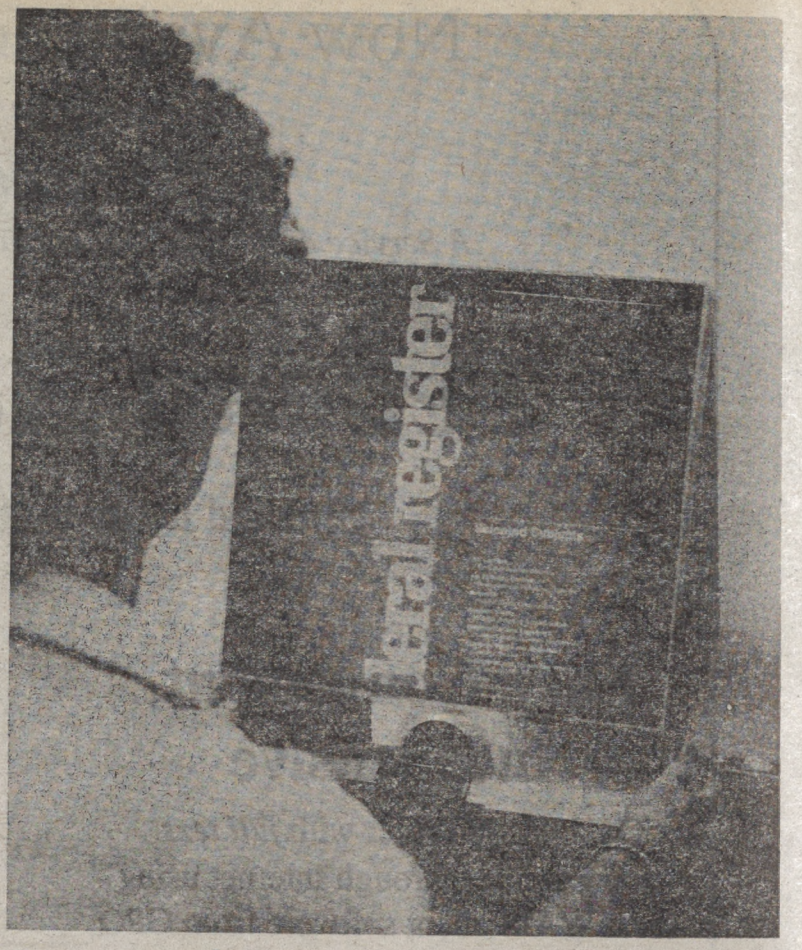

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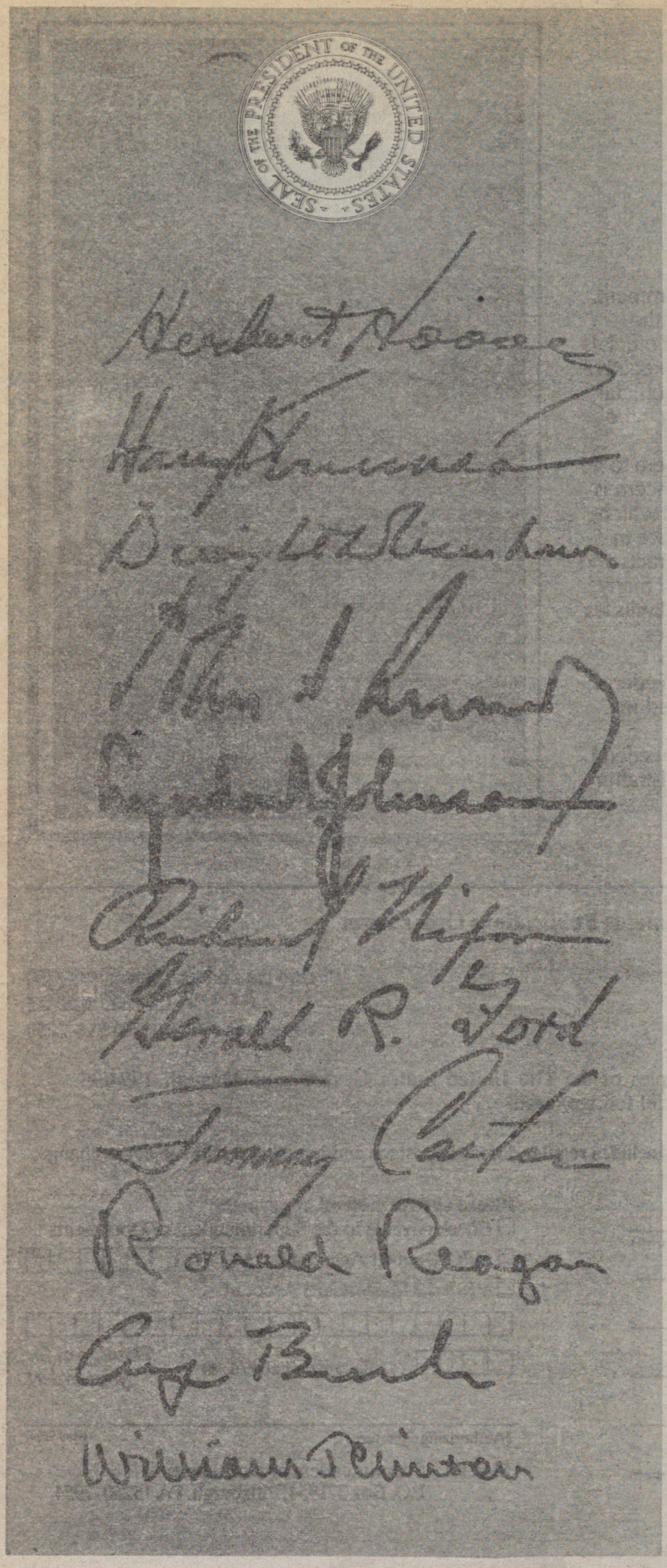

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