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(TWO BRIEFINGS)

WHEN: January 25 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550, 551, 575, 581, and 870

RIN 3206–AG47

Pay Administration; Premium Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations on availability pay, a new form of premium pay that applies to criminal investigators who are required to work, or be available to work, substantial amounts of unscheduled overtime duty based on the needs of the employing agency. Availability pay is fixed at 25 percent of basic pay (including locality pay).

DATES: *Effective Date:* The regulations are effective October 30, 1994.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after October 30, 1994.

Comments Date: Comments must be received on or before February 21, 1995.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: D. Bryce Baker, (202) 606–1413.

SUPPLEMENTARY INFORMATION: Section 633 of the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1995 (Public Law 103–329, September 30, 1994) amended title 5, United States Code, to provide for a new form of premium pay called "availability pay" for criminal investigators. The availability pay provision takes effect on the first day of the first pay period beginning on or after October 30, 1994, except that implementation may be delayed until September 1995 for certain criminal investigators employed by Inspectors General. Criminal investigators receiving availability pay are exempt from the minimum wage and overtime pay provisions of the Fair Labor Standards Act and may not receive administratively uncontrollable overtime (AUO) pay.

AUO Pay and Availability Pay

Availability pay replaces AUO pay for covered criminal investigators. Some of the major differences between AUO pay and availability pay are as follows:

- The use of AUO pay is discretionary on the part of the employing agency. In contrast, availability pay is a guaranteed employee entitlement that the employing agency must provide, if the required conditions are met.
- The level of AUO pay may vary from 10 to 25 percent of basic pay, depending on the average number of AUO hours worked per week. Availability pay is fixed at 25 percent of basic pay.
- AUO pay is calculated based upon the number of hours actually worked. Availability pay also takes into account certain hours when a criminal investigator is determined by the employing agency to be available to work.
- While both AUO pay and availability pay are the sole compensation for irregular and occasional overtime work (i.e., overtime hours not scheduled in advance of an employee's administrative workweek), availability pay is also the sole compensation for any overtime work hours that are the first 2 hours of overtime work on any day containing part of the employee's basic 40-hour workweek (regardless of how those hours are scheduled).
- AUO pay is not basic pay for severance pay purposes, while availability pay is basic pay for severance pay purposes.

Coverage

Eligibility for availability pay is limited to criminal investigators. The regulations make clear that the only General Schedule (GS) employees who qualify as criminal investigators for the purpose of availability pay are those properly classified in the GS–1811 (Criminal Investigating) and GS–1812 (Game Law Enforcement) series under OPM standards. The GS–1812 series applies to criminal investigators with specialized duties and skill requirements associated with game law enforcement. Congress indicated its intent that availability pay be limited to these two classification series of employees in the conference report on the bill that was enacted as Public Law 103–329. (See House Congressional Record, September 20, 1994, page H9268.)

Availability pay applies only to those GS–1811 and GS–1812 criminal investigators who meet the definition of "law enforcement officer" in 5 U.S.C. 5541(3), which generally requires that the employee be covered under the early retirement provisions for law enforcement officers. However, an investigator may also meet that definition if he or she holds a supervisory or administrative position that has been officially approved as a "secondary position" under the regulations governing the law enforcement officer retirement provisions.

Members of the Senior Executive Service (SES) (including the Federal Bureau of Investigations and Drug Enforcement Administration SES) are not eligible to receive availability pay. Availability pay is one type of premium pay among many that are addressed in subchapter V of title 5, United States Code. No premium pay under subchapter V is applicable to SES members, since they are excluded from the definition of "employee" in 5 U.S.C. 5541(2). The term "criminal investigator" in the availability pay provision is linked to the definition of "law enforcement officer" in 5 U.S.C. 5541(3), which in turn is linked to the definition of "employee" in 5 U.S.C. 5541(2). In interpreting a term within the context of the premium pay subchapter, all of the conditions of these definitions must be met.

Availability Hours

In determining whether a criminal investigator qualifies for availability pay, the employing agency must determine whether the investigator is expected to work, or be available to work, an annual average of 2 hours of

unscheduled duty per regular work day. Available-to-work hours are those hours during which the employing agency determines the investigator is generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status, meaning that it directs the investigator to be available during designated periods to meet agency needs. Availability hours on a regular workday are included in the computation of the annual average, regardless of whether an investigator actually works during those hours. However, availability hours on a nonregular workday are used in computing the annual average only if the investigator is actually required to work during those hours. (See 5 U.S.C. 5545a(d)(3) and 5 CFR 550.183(c).)

Although availability hours during which no work is performed may be used to justify entitlement to availability pay, it was the intent of Congress that the existence of this availability condition should not be interpreted by criminal investigators as license to reduce their actual work hours. (See Senate Committee on Appropriations Report 103–286, June 16, 1994, page 100.) This suggests that agencies should ensure that all investigators receiving availability pay are performing significant amounts of actual unscheduled overtime work, as opposed to being merely available to perform such work.

Regular Workday

The regular workdays used as the denominator in the annual average computation are defined in the regulations as days in the investigator's basic workweek during which the investigator works at least 4 hours, excluding overtime hours, approved training hours, hours engaged in travel under official travel orders, approved leave hours, and excused absence hours. (Travel hours are limited to hours during which the investigator is traveling under official travel orders so as to make clear that local area "travel" that is part of an investigator's normal duties should not be excluded as work hours in determining regular work days. An investigator is "traveling under official orders" only for out-of-area travel and then only for that period of time during which he or she is actually engaged in traveling. Once an investigator reaches the out-of-area destination, any local travel in that area must be treated the same as local travel in the area where the investigator is permanently stationed.)

The exclusion of training, travel, approved leave, and excused absence hours reflects, in part, an interpretation of the of the term "works" as used in the statutory definition of "regular work day" (5 U.S.C. 5545a(a)(4)). At the same time, the exclusion gives effect to another statutory provision requiring that an investigator "be considered to be available when the investigator cannot reasonably and generally be accessible" due to certain assignments or circumstances controlled by the agency (5 U.S.C. 5545a(d)(4)).

Excluding hours in training, travel, approved leave, and excused absence in determining whether a day qualifies as a regular workday ensures that the time spent in such situations does not adversely affect an investigator's annual average hours computation. In effect, the same annual average of unscheduled duty hours computed for regular workdays is presumed to apply to other days in the basic workweek (such as leave days). Thus, consistent with the law, the investigator essentially is treated as if he or she were available on such days. While training and travel hours are not used in determining regular workdays, unscheduled duty hours involving training or travel that are otherwise qualifying would be included as hours of unscheduled duty (numerator) in the annual average computation.

When Availability Pay Must Be Paid

The purpose of the availability pay provision is to ensure the availability of criminal investigators for unscheduled duty based on the needs of the employing agency (See 5 U.S.C. 5545a (b) and (c).) The law provides that availability pay "shall be paid" to ensure this availability, subject to the conditions of the law. One condition is that availability pay can be paid only if the annual average hours requirement is and will be met, as certified by the investigator.

To ensure the availability of criminal investigators as intended by the law, agencies generally must ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the average hours requirement and make the necessary certification. However, the regulations provide for the possibility of not providing availability pay to otherwise qualified criminal investigators under several narrow exceptions. (See 5 CFR 550.182 (d) through (f), 550.184(d), and 550.185 (c) and (d).)

The regulations provide that an employing agency may, at its discretion, approve a criminal investigator's voluntary request that he or she generally not be assigned any overtime hours (including unscheduled duty) for a designated period based on a personal or family hardship situation (e.g., the investigator needs to assist in caring for a chronically ill family member). The investigator would be required to sign a written statement documenting this request and his or her understanding that availability pay will be suspended. This voluntary opt-out provision is intended to apply to situations where the expected duration of the designated period is long enough that the investigator would likely be unable to satisfy the annual average hours requirement. Agencies are expected to monitor closely the use of this authority to ensure that investigators are not allowed to opt out of availability pay for long periods of time, only to opt back in at the end of a career as a way of inappropriately inflating the average salary used in the retirement annuity computation. OPM invites comments on this voluntary opt-out provision and will consider refinements of the criteria for opting out when final regulations are issued.

The regulations also provide that an agency may suspend payment of availability pay when the agency determines that an investigator has not been performing the required amount of unscheduled duty as assigned or reported. This reflects the intent of Congress that agencies would have the prerogative to remove availability pay if an investigator avoids work or availability. (See Senate Committee on Appropriations Report 103–286, June 16, 1994, page 100.) In addition, the regulations provide that availability pay may be suspended if an investigator is in a duty status but unable to perform unscheduled duty for an extended period due to physical or health limitations.

As required by the law, an involuntary suspension of availability pay as a result of a denial or cancellation of an availability pay certification is an adverse action under 5 U.S.C. 7512(4) and 5 CFR part 752. This means that availability pay is considered to be "pay" under 5 CFR 752.402(f). Also, a voluntary request that availability pay be suspended under the voluntary opt-out provision does not trigger adverse action rights.

A criminal investigator who is not receiving availability pay would be entitled to compensation for any overtime work under other provisions of law, as applicable. However, given the nature of the exceptions described above, it is not expected that any such investigator would receive AUO pay

Criminal Investigators in Inspector General Offices

The law provides for a delayed effective date for criminal investigators employed in offices of Inspectors General who are not receiving 25-percent AUO pay. These regulations clarify that the employing Inspector General (IG) office, not the criminal investigators themselves, shall be responsible for determining the delayed effective date for such criminal investigators, subject to the limits in the law. (For clarification of congressional intent in this regard, see Senate Congressional Record, September 28, 1994, page S13551.)

These regulations also clarify that criminal investigators in IG offices are subject to the same rules, requirements and conditions that apply to all other criminal investigators under the availability pay provision. Thus, for example, the required initial and annual certifications (related to the annual average hours requirement) must be made.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective retroactively. Section 633 of Public Law 103–329, which authorizes availability pay, was enacted on September 30, 1994. The availability pay authority is effective on October 30, 1994 and applies on the first day of the first applicable pay period beginning on or after October 30, 1994. These regulations are being made effective retroactively to the effective date of the law to ensure that the availability pay provision is uniformly implemented.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 551

Government employees, Wages.

5 CFR Part 575

Government employees, Wages.

5 CFR Part 581

Alimony, Child support, Government employees, Wages.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 550, 551, 575, 581, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for part 550, subpart A, is revised to read as follows:

Authority: Subpart A issued under 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, February 1, 1991, 3 CFR 1992 Comp., p. 316.

2. In § 550.103, paragraphs (i) and (p) are revised, and paragraph (u) is added to read as follows:

§ 550.103 Definitions.

* * * * *

(i) *Premium pay* means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty, administratively uncontrollable overtime work, or availability duty

* * * * *

(p) *Regularly scheduled work* means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111, excluding any such work to which availability pay under § 550.181 applies.

* * * * *

(u) *Criminal investigator* means a law enforcement officer as defined in paragraph (t) of this section (other than a special agent in the Diplomatic Security Service) who, based on OPM standards, is properly classified under the GS–1811 or GS–1812 series in the General Schedule classification system, or who would be so classified if covered under that system.

3. In § 550.111, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 550.111 Authorization of overtime pay.

(a) Except as provided in paragraphs (d) and (f) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is—

(1) Officially ordered or approved; and

(2) Performed by an employee. Hours of work in excess of 8 in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

* * * * *

(f)(1) For any criminal investigator receiving availability pay under § 550.181, overtime work means work that is scheduled in advance of the administrative workweek—

(i) In excess of 10 hours on a day containing hours that are part of such investigator's basic 40-hour workweek, or

(ii) On a day not containing hours that are part of such investigator's basic 40-hour workweek.

(2) Any work that would be overtime work under this section but for paragraph (f)(1) of this section shall be compensated by availability pay under § 550.181.

4. In § 550.163, paragraph (e) is added to read as follows:

§ 550.163 Relationship to other payments.

(e) Premium pay on an annual basis under § 550.141 or § 550.151 may not be paid to a criminal investigator receiving availability pay under § 550.181.

5. Sections 550.181 through 550.187 are added to read as follows:

Law Enforcement Availability Pay

§ 550.181 Coverage.

Each criminal investigator meeting the definition in § 550.103(u), and the conditions and requirements of 5 U.S.C. 5545a and the regulations in §§ 550.181 through 550.187, shall receive availability pay to ensure the availability of criminal investigators for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency.

§ 550.182 Unscheduled duty.

(a) *Unscheduled duty hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Overtime hours compensated under 5 U.S.C. 5542 and § 550.111 (which are those overtime hours

scheduled in advance of the investigator's administrative workweek, excluding any such hours that are the first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)).

(b) *Actual work hours.* To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(c) *Availability hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status shall not be considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and 5 CFR 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) *Ensuring availability.* Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in § 550.183 and make the certification required under § 550.184.

(e) *Voluntary opt-out.* Notwithstanding paragraph (d) of this section, an employing agency may, at its discretion, approve a criminal investigator's voluntary request that the investigator generally be assigned no overtime work (including unscheduled duty) for a designated period of time because of a personal or family hardship situation. The investigator must sign a written statement documenting this request and his or her understanding that availability pay will not be payable during the designated period.

(f) *When availability pay is suspended.* The employing agency is not subject to the requirement of paragraph (d) of this section in the case of a criminal investigator for whom availability pay is suspended in accordance with § 550.184(d) due to denial or cancellation of the required certification based on—

(1) Failure to perform unscheduled duty as assigned or reported; or

(2) Inability to perform unscheduled duty for an extended period because of a physical or health condition.

§ 550.183 Substantial hours requirement.

(a) A criminal investigator shall be eligible for availability pay only if the annual average number of hours of unscheduled duty per regular workday is 2 hours or more, as certified in accordance with § 550.184. This average is computed by dividing the total unscheduled duty hours for the annual period (numerator) by the number of regular workdays (denominator).

(b) For the purpose of this section, *regular workday* means each day in the criminal investigator's basic workweek during which the investigator works at least 4 hours, excluding—

(1) Overtime hours compensated under 5 U.S.C. 5542 and § 550.111;

(2) Unscheduled duty hours compensated by availability pay under 5 U.S.C. 5545a and this subpart; and

(3) Hours during which an investigator is engaged in agency-approved training, is traveling under official travel orders, is on approved leave, or is on excused absence with pay (including paid holidays).

(c) In computing average hours under paragraph (a) of this section, the total unscheduled duty hours in the numerator shall include—

(1) Any unscheduled duty hours on a regular workday; and

(2) Any unscheduled duty hours actually worked by an investigator on days that are not regular workdays.

§ 550.184 Annual certification.

(a) Each newly hired criminal investigator who will receive availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an initial certification to the head of the agency attesting that the investigator is expected to meet the substantial hours requirement in § 550.183 during the upcoming 1-year period. A similar certification shall be made for a criminal investigator who will begin receiving availability pay after a period of nonreceipt (e.g., a designated voluntary opt-out period under § 550.182(e)).

(b) Each criminal investigator who is receiving availability pay and the appropriate supervisory officer (as designated by the head of the agency or authorized designee) shall make an annual certification to the head of the agency attesting that the investigator currently meets, and is expected to continue to meet during the upcoming 1-year period, the substantial hours requirement in § 550.183.

(c) A certification shall no longer apply when the employee separates from Federal service, is employed by another agency, moves to a position that does not qualify as a criminal investigator position, or begins a voluntary opt-out period under § 550.182(e).

(d) The employing agency shall ensure that criminal investigators receiving availability pay comply with the substantial hours requirement in § 550.183, as certified in accordance with this section. The employing agency may deny or cancel a certification based on a finding that an investigator has failed to perform unscheduled duty (availability or work) as assigned or reported, or is unable to perform unscheduled duty for an extended period due to physical or health reasons. If a certification is denied or canceled, the investigator's entitlement to availability pay shall be suspended for an appropriate period, consistent with agency policies. If the investigator's certification was valid when made, the suspension of availability pay shall be effected prospectively.

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section shall be a reduction in pay for the purpose of applying the adverse action provisions of 5 U.S.C. 7512 and 5 CFR part 752.

(f) The head of an agency (or authorized designee) may prescribe any additional regulations necessary to administer the certification requirement, including procedures for retroactive correction in cases in which a certification is issued belatedly or lapses due to administrative error.

§ 550.185 Payment of availability pay.

(a) Availability pay shall be an amount equal to 25 percent of the criminal investigator's rate of basic pay (as defined in § 550.103(j)). However, availability pay shall be paid only for periods of time during which the investigator receives basic pay.

(b) Except as provided in paragraph (c) of this section, a criminal investigator who is eligible for availability pay shall continue to receive

such pay during any period such investigator is attending agency-sanctioned training, on agency-ordered travel status, on agency-approved leave with pay, or on excused absence with pay for relocation purposes.

(c) Agencies may, at their discretion, provide availability pay to criminal investigators during training that is considered initial, basic training usually provided in the first year of service.

(d) Agencies may, at their discretion, provide for the continuation of availability pay when a criminal investigator is on excused absence with pay, except where payment is mandatory under paragraph (b) of this section.

(e) The amount of availability pay payable to a criminal investigator for a pay period is not affected by the occurrence of a paid holiday during that period.

§ 550.186 Relationship to other payments.

(a) Standby duty pay under § 550.141 and administratively uncontrollable overtime pay under § 550.151 may not be paid to a criminal investigator receiving availability pay. Receipt of availability pay does not affect an investigator's entitlement to other types of premium pay (including overtime pay under § 550.111) based on hours other than unscheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

(b) Availability pay shall be treated as part of basic pay only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) 5 U.S.C. 8431, pertaining to the Thrift Savings Plan; and

(6) 5 U.S.C. 8704(c), pertaining to life insurance.

(c) Availability pay shall be used in computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552.

(d) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

§ 550.187 Transitional provisions.

(a) Except as provided in paragraph (b) of this section, not later than the first day of the first pay period beginning on or after October 30, 1994, each criminal investigator qualified to receive availability pay and the appropriate supervisory officer (as designated by the agency head or authorized designee) shall make an initial certification to the head of the agency that the investigator is expected to meet the substantial hours requirement in § 550.183. The head of an agency may prescribe procedures necessary to administer this paragraph.

(b)(1) In the case of criminal investigators who are employed in offices of Inspectors General and who, immediately prior to September 30, 1994, were not receiving administratively uncontrollable overtime pay, or were receiving such pay at a rate of less than 25 percent, the employing office may delay implementation of availability pay; however, availability pay shall be implemented (in accordance with §§ 550.181 through 550.186) no later than—

(i) September 30, 1995, for investigators who are not receiving administratively uncontrollable overtime pay; or

(ii) The first day of the last pay period ending on or before September 30, 1995, for investigators who were receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994.

(2) A criminal investigator who is employed in an Inspector General office and was receiving administratively uncontrollable overtime pay at a rate of less than 25 percent immediately prior to September 30, 1994, shall continue to receive at least that rate or a higher rate, if increased by the employing agency, until the availability pay provision is implemented for the position (no later than as provided in paragraph (b)(1)(ii) of this section).

(3) Implementation of availability pay for criminal investigators under paragraph (b)(1) of this section shall be in accordance with the requirements and conditions set forth in §§ 550.181 through 550.186. For qualified investigators, an initial certification shall be made, consistent with paragraph (a) of this section.

Subpart B—Advances in Pay

6. The authority citation for part 550, subpart B, is revised to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509), 104 stat. 1462 and 1466, respectively; E.O. 12748, February 1, 1991, 3 CFR 1992 Comp., p. 316.

7. In § 550.202, the definition of *rate of basic pay* is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay under 5 U.S.C. 5545(c), availability pay under 5 U.S.C. 5545a, night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

Subpart G—Severance Pay

8. The authority citation for part 550, subpart G, is revised to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, November 13, 1965, 3 CFR 1954–1965 Comp., p. 357

9. In § 550.703, the definition of *rate of basic pay* is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including, as applicable, annual premium pay for standby duty under 5 U.S.C. 5545(c)(1), availability pay under 5 U.S.C. 5545a, night differential for prevailing rate employees under 5 U.S.C. 5343(f), and any interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, but not including additional pay of any kind.

* * * * *

PART 551—PAY ADMINISTRATION UNDER THE FLSA

10. The authority citation for part 551 is revised to read as follows:

Authority: 5 U.S.C. 5542c; sec. 4(f) of the Fair Labor Standards Act for 1938, as amended by Public Law 93–259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart B—Exemptions

11. Section 551.209 is added to read as follows:

§ 551.209 Exemption of criminal investigators receiving availability pay.

A criminal investigator receiving availability pay under § 550.181 is exempt from the hours of work and overtime pay provisions of the Act.

Subpart C—Minimum Wage Provisions

12. In § 551.301, paragraph (a) is revised to read as follows:

§ 551.301 Minimum wage.

(a)(1) Except as provided in paragraph (a)(2) of this section and § 551.311, an agency shall pay each of its employees wages at rates not less than the minimum wage specified in section 6(a)(1) of the Act for all hours of work as defined in subpart D of this part.

(2) The minimum wage provisions of the Act do not apply to a criminal investigator receiving availability pay under § 550.181.

* * * * *

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

13. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, February 1, 1991, 3 CFR 1992 Comp., p. 316.

Subpart D—Supervisory Differentials

14. In § 575.405, paragraphs (c)(5) and (c)(6) are revised and paragraph (c)(7) is added to read as follows:

§ 575.405 Calculation and payment of supervisory differential.

* * * * *

(c) * * *

(5) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code;

(6) Premium pay paid on an annual basis under 5 U.S.C. 5545(c); and

(7) Availability pay under 5 U.S.C. 5545a.

* * * * *

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

15. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262) (1979).

Subpart A—Purpose and Definitions

16. In § 581.103, paragraph (a)(6) is revised to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) * * *

(6) Standby duty pay, administratively uncontrollable overtime pay, and availability pay;

* * * * *

PART 870—BASIC LIFE INSURANCE

17. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J is also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

Subpart C—Amount of Insurance

18. In § 870.302, paragraph (a) is revised to read as follows:

§ 870.302 Annual rates of pay.

(a) An insured employee's annual pay is his/her annual rate of basic pay as fixed by law or regulation, except that annual pay for this purpose shall include—

(1) Standby duty premium pay under 5 U.S.C. 5545(c)(1);

(2) For a law enforcement officer as defined in §§ 831.902 or 842.802, administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2); and

(3) Availability pay under 5 U.S.C. 5545a.

* * * * *

[FR Doc. 94–31650 Filed 12–22–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV94–966–1FIR]

Tomatoes Grown in Florida; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which clarified registered handler application and approval procedures and the Florida Tomato Committee's (committee) authority to cancel a handler's certificate of registration for good cause. That rule also clarified that only registered handlers of Florida tomatoes may ship such tomatoes in interstate commerce. The interim final rule also added special purpose shipment outlets, redefined one of those outlets, and brought the order's special purpose shipment provisions into conformity with each other. Finally, that rule provided that handlers must report packout information on a daily basis to the committee or an authorized agent of the committee. Continuation of these changes is expected to enhance compliance with the order.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169, or Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 966 [7 CFR part 966], both as amended, regulating the handling of tomatoes grown in Florida. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or

has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

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

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

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms, including tomato handlers, are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

This rule finalizes an interim final rule that added a daily packout report and special purpose shipment outlets, redefined one of those outlets, and brought the order's special purpose shipment provisions into conformity with each other. That rule clarified registered handler application and approval procedures and the Florida Tomato Committee's (committee) authority to cancel a handler's certificate of registration for good cause. That rule also clarified that only registered handlers of Florida tomatoes may ship such tomatoes in interstate commerce. These changes were unanimously recommended by the committee. In addition, the Department made conforming changes.

The interim final rule was published in the **Federal Register** [59 FR 51087, October 7, 1994], with an effective date of October 7, 1994. The rule amended §§ 966.113, 966.120, and 966.323. Interested persons were invited to submit written comments until November 7, 1994. Three comments were received in support of the changes.

On May 31, 1994, the committee met to discuss the difficulty it had experienced in collecting assessments from a few handlers and in receiving complete, up-to-date packout information from some handlers. The committee recommended several modifications to the order's existing rules and regulations to improve these situations.

Handler Certification

Pursuant to § 966.323 Handling regulation, fresh market shipments of tomatoes by handlers to points outside the regulated area must meet grade, size, inspection, and container requirements. Fresh market shipments within the regulated area are not subject to such requirements. Fresh market shipments within and outside the regulated area are subject to assessments. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia Border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the Panhandle. The production area is part of the regulated area.

Under § 966.113 Registered handler, and for the purpose of this order, registered handlers are persons who have adequate facilities for grading tomatoes for market and who assume initial responsibility for compliance with inspection, assessment, reporting, and other regulatory requirements concerning tomatoes grown in the production area. Any person who wishes to become a registered handler is required to make an application for registration with the committee on forms prescribed by, and available at the principle office of, the committee. If the applicant has facilities which are determined by the committee as adequate for grading tomatoes, the applicant may be approved as a registered handler. "Adequate facilities" had been defined as those being in a permanent location with nonportable equipment for the proper grading, sizing and packing of tomatoes. The committee recommended two minor additions to the definition: (1) The term "washing" was added to the definition, as that activity is an integral part of the handling process; and (2) the phrase "grown in the production area" was added at the end of the definition to further identify the tomatoes being handled. These changes were implemented by the interim final rule.

Most tomatoes produced in Florida are shipped fresh to markets outside the regulated area. The committee's goal is to avoid marketing problems associated with poor quality tomato shipments. The industry has spent substantial sums of money to promote Florida tomatoes to the trade and consumers. Such expenditures are predicated on the shipment by handlers of good quality tomatoes, which buyers have come to expect from Florida.

The committee reported that it had been difficult to collect assessments from some handlers in the past. One handler indicated no intention of paying assessments this year. Because of these compliance difficulties, and to foster shipments of good quality tomatoes, the committee recommended changes in the rules and regulations to strengthen the registered handler procedures, clarify handler responsibilities under the order and enhance the committee's compliance capabilities.

The committee recommended amending § 966.113 and adopting new provisions which: (1) Established that registered handlers must be certified by the committee; (2) provided the committee with the authority, criteria, and procedures for approving registered handler certifications and for cancelling such certifications for failure to pay assessments or provide reports to the committee; and (3) allowed only registered handlers to lawfully ship tomatoes outside of the regulated area. After considering the committee's recommendations, the Department determined that the changes were necessary to effectuate the declared policy of the Act.

New § 966.113 contained an introductory statement explaining the criteria that a handler must meet to be registered under the order. These provisions include having adequate facilities and being certified by the committee as a registered handler, handling tomatoes in compliance with order requirements, obtaining inspection, submitting required reports, and paying applicable assessments. Four of these provisions were specified in § 966.113. The provisions for certification as a registered handler and submission of reports were added to § 966.113 to help the committee with its compliance responsibilities and improve marketing assistance provided to handlers under the order.

New paragraph (a) established qualifications for registered handler certification. The committee or its duly authorized agent inspects handling facilities to determine if those facilities meet the requirements for certification. The facilities must be located in the regulated area and be permanent, nonportable buildings. The equipment in the facilities must also be nonportable and capable of properly washing, grading, sizing, and packing tomatoes grown in the production area. These requirements were the same as

those in the former definition for *Adequate facilities* in paragraph (e) of § 966.323, with the addition of washing as an activity and the reference to where the tomatoes are produced. The definition was removed from paragraph (e) of § 966.323 and, as modified, added to new paragraph (a) of § 966.113 to define, in the appropriate place in the rules and regulations, the kind of facilities and equipment needed for certification as a registered handler.

New paragraph (b) of § 966.113 specified the information requested by the committee in the application for registered handler certification. The information requested is common business identification information.

New paragraph (c) of § 966.113 provided that the committee or an agent of the committee make the determination that an applicant's facilities meet requirements. Such certification is made in writing by the committee. Denial of certification, and the basis thereof, is also made in writing to the applicant by the committee.

New paragraph (d) of § 966.113 established criteria for cancellation of a registered handler's certification, with the approval of the Secretary, based on failure to pay assessments on a timely basis and failure to provide required reports. A registered handler's certification is also subject to cancellation, with the approval of the Secretary, if the handler no longer has adequate facilities, as that term is defined in § 966.113(a). A cancelled certification is reinstated once a handler demonstrates compliance with assessment, reporting and facility requirements. New paragraph (d) also included the exemption, currently in § 966.113, concerning persons who make deliveries of ungraded tomatoes to handling facilities.

New paragraph (e) of § 966.113 provided that any inspection certificate of tomatoes offered for inspection by a non-registered handler contains a statement to that effect. The inspection certificate for all such tomato lots reads "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Such failing certificate is issued, regardless of the grade, size, or containerization of the tomatoes inspected. The committee keeps the Federal State Inspection Service (inspection service) abreast of all handlers' status. Any handler who is denied a registered handler certificate or who has a registered handler certificate cancelled, may appeal to the committee for reconsideration. Such appeal must be made in writing.

The Florida Road Guard Bureau of the Florida Department of Agriculture and Consumer Services releases tomato shipments for interstate commerce only if the inspection certificates indicate that such shipments meet marketing order requirements. Thus, persons or handlers not certified as a registered handler by the committee will not be able to ship tomatoes outside the regulated area.

The committee recommended that this provision be included under a separate title and paragraph. Because inspection certification is dependent on handler certification, the Department included this recommendation as part of the new provision on certified registered handlers in § 966.113. For emphasis and to provide consistency in regulations, the Department also added this requirement to paragraph (a)(4) *Inspection.* in § 966.323.

Section 966.113 provides that handlers must pay assessments on a timely basis to maintain their registered handler certification. For emphasis and to provide consistency in regulations, the Department also added this requirement as new paragraph (e) *Assessments.* under § 966.323.

Certificates of Privilege

The committee recommended changing an incorrect citation in the first sentence of § 966.120 Application for Certificate of Privilege which incorrectly referred to § 966.53 of the order. The committee stated that the intent of the section is to require Certificates of Privilege for special purpose shipments authorized in § 966.54 Shipments for special purposes. Thus, § 966.54 was referenced in the first sentence of § 966.120. This adjustment did not change former practices as the committee's use of Certificates of Privilege is consistent with § 966.54 of the order.

The interim final rule also changed § 966.120 to be consistent with the outlets specified in § 966.323 Handling regulations. One outlet currently specified in § 966.120 was changed and three new outlets were added. The term "processing" replaced the term "canning" to make the regulations consistent with current industry practice. Pickling, experimental purposes and export, which were specified in § 966.323(b), are added to § 966.120. The committee also proposed that it have the authority, with the Secretary's approval, to add other outlets to meet changing food technologies and services which could benefit from receiving tomatoes shipped under Certificate of Privilege. This authority was added to § 966.120.

The Department made conforming changes to paragraph (b) of § 966.323 to make that paragraph consistent with the changes to § 966.120. The term "canning" was changed to "processing" and committee authority to add special purpose outlets, with the Secretary's approval, was added.

The Department also added a definition for "processing" to paragraph (e) § 966.323 Definitions. "Processing" was defined as the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. Also, paragraph (e) of § 966.323 was redesignated as paragraph (g).

Packout Reports

The committee also recommended that all handlers be required to present daily packout reports to the inspection service. The inspection service collects these reports from most handlers for inspection billing purposes and sends a daily packout report to the committee.

All handlers maintain records of their daily packout activity based on the grade, size, and containers of tomatoes handled. The inspection service collects this data at the end of each work day for inspection billing purposes. As a service to the committee and tomato handlers, the inspection service compiles this information (received from its various inspectors) and reports it to the committee at the end of the day or the following morning. The committee compiles this data into a daily, industry-wide, packout report. The report is considered an indispensable tool for handlers to assess daily tomato market conditions and is disseminated, upon request, to registered handlers.

However, some handlers had failed to provide their packout data to the inspection service on a timely basis to allow inclusion of the handler's data in each daily, industry-wide report. To be a useful tool, the industry-wide report must be accurate and include, to the extent possible, the total industry packout. Because the report is such a valuable marketing tool for handlers, the committee voted unanimously to propose that each registered handler be required to report the handler's daily packout data to the inspection service in a timely manner.

The packout data that handlers provide to the inspection service, to the committee directly, or to another agent of the committee is data that is routinely compiled by each handler as part of the handler's normal, daily operating records. The reporting deadline of the end of the working day, as designated

by the committee, has not presented an undue burden on handlers because the data requested is routinely recorded by handlers at the end of each working day. Individual handler data collated and disseminated in an industry-wide report has not disclosed confidential information or the business position of individual handlers.

The committee recommended that this change be added to the rules and regulations as a separate, new number, title and paragraph. However, because the new provision established a reporting requirement on handlers, the Department inserted the provision as a separate, new paragraph under § 966.323. Thus, a new paragraph (e) was added to the handling regulation and former paragraph (e) *Definitions.* was redesignated as paragraph (g).

Assessments

Finally, the committee recommended that a clarification be added to the rules and regulations to clearly state that handlers must pay assessments to maintain their certification as registered handlers. Failure of some handlers to pay their assessments places an unfair burden upon those handlers who comply with order requirements. The Department added this clarification to § 966.323 Handling regulation because payment of assessments is a requirement of handlers under the order. A new paragraph *(f) Assessments.* was added to § 966.323. This paragraph stated that failure of a registered handler to pay assessments in a timely manner will result in cancellation of the registered handler's status, thus making that handler ineligible to ship tomatoes outside of the regulated area. Current committee collection procedures are:

(1) Weekly assessment billings during the harvest season;

(2) Payment within 30 days;

(3) Followed by a demand letter specifying the end of a 15-day extended notice period; and

(4) Referral to the Department for legal action. Under this rule, a handler who has not paid assessments after expiration of the extended notice period provided in the demand letter is considered out of compliance and is reported to the inspection service as a non-registered handler.

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

In accordance with the Paper Work Reduction Act of 1980, [44 U.S.C. Chapter 35], the information collection requirements contained in the interim final rule were submitted to the Office of Management and Budget (OMB) for approval and assigned OMB No. 0581–0073. Because handlers complete a form to be certified as a registered handler, no additional OMB approval was needed for such registration. However, that rule provided that each registered handler, at the end of each day in which tomatoes were handled by the registered handler, furnish the committee or it's designated agent an accurate accounting of the number of tomato containers packed that day. This report provides the grade, size, and containers of tomatoes packed by the handler each packing day. Because the information is readily available from each day's packout, the report takes five minutes to complete. The committee needs this information to compile a daily packout report which is used by handlers in their marketing efforts. This provision is consistent with current industry practice. It is estimated that 50 handlers submit daily reports and receive marketing assistance during the marketing period October 10, through June 15 each year. The OMB approved this information collection request on November 18, 1994.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** [59 FR 51087, October 7, 1994], will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final amending 7 CFR part 966 which was published at 59 FR 51087 on October 7, 1994, is adopted as a final rule without change.

Dated: December 19, 1994

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 94–31612 Filed 12–22–94; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 984

[Docket No. FV94–984–1FIR]

Walnuts Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California walnuts are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts handled during the 1994–95 marketing year, which began August 1, 1994, and ends July 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for

a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 5,000 producers of California walnuts under this marketing order, and approximately 65 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

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

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Because that rate will be applied to the actual quantity of certified merchantable walnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met September 9, 1994, and unanimously recommended a 1994–95 budget of $2,170,772, $229,125 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Administrative salaries, $101,712 ($101,331), Board expenses, $35,000 ($32,000), office rent, $26,419 ($25,704), domestic market research and development, $953,000 ($875,000), walnut production research, $718,302 ($438,488), crop survey, $45,000 ($43,000), and crop estimate, $60,000 ($52,000). Items which have decreased compared to the amount budgeted for 1993–94 (in parentheses) are: Social security and hospital insurance taxes, $8,129 ($9,700), group life, retirement, and medical, $44,370 ($47,485), office salaries, $40,740 ($40,771), equipment maintenance and warranties, $10,000 ($12,000), furniture, fixtures, and automobiles, $5,000 ($20,000), and production research director, $40,000 ($91,068). The Board also eliminated funding for export market research and development and the reserve for contingencies for which $20,000 and $50,000 were recommended last year, respectively. All other items are budgeted at last year's amounts.

The Board also unanimously recommended an assessment rate of $0.0111 per kernelweight pound, $0.0021 more than the previous year. This rate, when applied to anticipated shipments of 198,000,000 kernelweight pounds of merchantable walnuts, will yield $2,197,800 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

An interim final rule was published in the **Federal Register** on October 31, 1994 (59 FR 54375). That interim final rule added § 989.345 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through November 30, 1994. No comments were received.

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

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

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

List of Subjects in 7 CFR Part 984

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

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 59 FR 54375 on October 31, 1994, is adopted as a final rule without change.

Dated: December 19, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 94–31611 Filed 12–22–94; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 94–261]

Miscellaneous Technical Amendments to Mergers and Transfers of Assets and Other Technical Corrections to Other Regulations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: This document contains corrections to the final rule on mergers, transfers of assets and liabilities and

other combinations involving savings associations (No. 94–76), which was published on Tuesday, August 30, 1994 (59 FR 44615). In addition the OTS is adopting several technical corrections and clarifications to various other regulations.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Elissa J. Schwartz, Senior Paralegal, Regulations and Legislation Division, (202) 906–7908.

SUPPLEMENTARY INFORMATION: On April 29, 1994, the Office of Thrift Supervision ("OTS") promulgated a final rule that amended, among other things, the OTS regulations at 12 CFR 563.22 pertaining to combinations and transfer of assets transactions. The amendments were published in the **Federal Register** on August 30, 1994 (59 FR 44615), and became effective on September 29, 1994.

The amendments redesignated former § 563.22(e) as § 563.22(f). This section provides that applications filed under § 563.22(a) are deemed to be automatically approved by the OTS 30 days after the OTS sends written notice to the applicant that the application is complete, unless one of several circumstances exists. The recent amendments revised the list of these circumstances, set forth at §§ 563.22(f)(1)–(15).

The description of the amendments to § 563.22(f), at 59 FR 44625, contained two errors. The description states that the OTS was revising newly designated paragraphs (f)(1), (f)(9) and (f)(14), when OTS had intended to revise newly designated paragraphs (f)(1), (f)(10) and (f)(15). As the section was amended, the situations that should have been described in paragraphs (f)(9) and (f)(14) were deleted from the list. In addition, the error caused paragraphs (f)(9) and (f)(10), and (f)(14) and (f)(15) to be essentially duplicative.

These corrective amendments amend paragraphs (f)(9), (f)(10), (f)(14) and (f)(15) to read as OTS had intended them to read upon the effective date of the final regulations.

In addition, the OTS is also taking this opportunity to update and correct certain obsolete references that appear in § 563.22(f) and in various other regulations. These corrections remove the term "District Director" which is no longer in use at OTS, and substitute a reference to "OTS" instead. The substitution does not signal any change in practice. The decisions and filings described in the revised regulatory provisions that are currently made at the regional level will continue to be made at the regional level under the delegations to the Regional Directors that are already in place. *See e.g.*, OTS Order No. 92–416 (September 24, 1992). This final rule merely removes redundant delegations of authority from regulatory language.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 563

Accounting, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision hereby amends part 563, chapter V, title 12 of the Code of Federal Regulations as set forth below:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§ 563.10 [Amended]

2. Section 563.10 is amended by removing the words "District Director" where they appear in paragraphs (c)(2), (c)(3) introductory text and (d) and by adding in lieu thereof the word "OTS".

3. Section 563.22 is amended by removing the words "District Director" where they appear in paragraphs (f) (2), (4), and (11) and by adding in lieu thereof the word "OTS", and by revising paragraphs (9), (10), (14) and (15) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(f) * * *

(9) In a transaction involving potential competition, the OTS determines that the acquiring savings association is one of three or fewer potential entrants into the relevant geographic area;

(10) The acquiring savings association has assets of $1 billion or more and proposes to acquire assets of $1 billion or more;

* * * * *

(14) The transaction raises a significant issue of law or policy; or

(15) The transaction is opposed by any constituent institution or contested by a competing acquiror.

* * * * *

§ 563.47 [Amended]

4. Section 563.47 is amended by removing the words "District Director" where they appear in paragraph (d) and by adding in lieu thereof the word "OTS".

§ 563.74 [Amended]

5. Section 563.74 is amended by removing the phrase "District Director or his or her designee" where it appears in paragraph (c) and by adding in lieu thereof the word "OTS", and by removing the phrase "concurrently to the District Director and to the Corporate and Securities Division" where it appears in paragraph (h) and by adding in lieu thereof the phrase "to the OTS".

§ 563.84 [Amended]

6. Section 563.84 is amended by removing the phrase "District Director and the Corporate and Securities Division of the Chief Counsel's Office" where it appears in paragraph (b)(7)(i) introductory text and by adding in lieu thereof the phrase "OTS pursuant to § 516.1 of this chapter".

§ 563.180 [Amended]

9. Section 563.180 is amended by removing the phrase "District Director for the District where the association's principal office is located" where it appears in paragraph (c) and by adding in lieu thereof the word "OTS".

Dated: December 16, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director

[FR Doc. 94–31521 Filed 12–22–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–58]

Modification of Class E Airspace: Clarendon, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Clarendon, TX. A recent amendment to the nondirectional radio

beacon (NDB) Runway (RWY) 1 standard instrument approach procedure (SIAP) resulted in the need to release control of some Class E airspace at Clarendon Municipal Airport. Controlled airspace extending upward from 700 feet above ground level, designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed is needed for aircraft executing the amended SIAP. This action will release control of unneeded Class E airspace, while maintaining adequate Class E airspace for IFR operations at Clarendon Municipal Airport, Clarendon, TX.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Clarendon, TX, was published in the **Federal Register** (59 FR 15138).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Class E airspace located at Clarendon, TX. An amendment to the NDB RWY 1 SIAP permits a reduction in the amount of Class E airspace needed for IFR operations at Clarendon Municipal Airport. The intended effect of this action is to release control of unneeded Class E airspace while maintaining adequate Class E airspace for aircraft executing the SIAP's at Clarendon, TX.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Clarendon, TX [Modify]

Clarendon Municipal Airport, TX.
(Lat. 34°54'38" N., long. 100°52'12" W.)
Clarendon RBN
(Lat. 34°54'37" N., long. 100°52'05" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Clarendon Municipal Airport and within 1.3 miles each side of the 209° bearing for the Clarendon RBN extending from the airport to 7.4 miles southwest of the RBN.

* * * * *

Issued in Fort Worth, TX, on December 8, 1994.

James R. Nausley,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–31589 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–60]

Establishment of Class E Airspace: Alta Vista Ranch Airport, Marfa, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Alta Vista Ranch Airport, Marfa, TX. The development of a very high frequency omni-directional range (VOR) standard instrument approach procedure (SIAP) to Runway (RWY) 15 has made this action necessary. This action is intended to provide adequate controlled airspace for aircraft executing the new VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Alta Vista Ranch Airport, Marfa, TX, was published in the **Federal Register** (59 FR 15137). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Alta Vista Ranch Airport, Marfa, TX. Controlled airspace extending upward from 700 feet above ground level, designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed is needed for aircraft executing the new VOR RWY 15 SIAP. This action is intended to provide adequate controlled airspace for aircraft executing the new VOR RWY 15 SIAP at Alta Vista Ranch Airport, Marfa, TX.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Marfa, Alta Vista Ranch Airport, TX [New]

Marfa, Alta Vista Ranch Airport, TX

(lat. 30°08′54″ N., long 103°53′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Alta Vista Ranch Airport.

* * * * *

Issued in Forth Worth, TX on December 8, 1994.

James R. Nausley,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–31590 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its regulations to raise the reporting levels at which futures commission merchants (FCMs), clearing members, foreign brokers, and traders must file large trader reports in natural gas, heating oil, frozen concentrated orange juice, and cocoa futures. By increasing the large trader reporting levels, this amendment reduces both burdens on persons reporting and the processing workload of the Commission.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW, Washington, D.C. 20581, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

Reporting levels are set in futures to ensure that the Commission receives adequate information to carry out its market surveillance programs. These are designed to detect and prevent market congestion and price manipulation and to enforce speculative position limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants, and other matters of public concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contracts markets, FCMs or foreign brokers ("firms") and traders, respectively, when a trader holds a "reportable position"; *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations.[1]

The Commission periodically reviews information concerning trading volume, open interest, and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In this regard, the Commission also is mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to ameliorating that burden to the extent compatible with adequate market coverage. The Commission's most recent review of reporting levels indicates that the size of trading volume, open interest, and positions of individual traders enable the Commission to raise reporting levels as follows: In cocoa, from 50 to 100 contracts; in frozen concentrated orange juice, from 25 to 50 contracts; in natural gas, from 50 to 100 contracts; and in heating oil, from 175 to 250 contracts. The Commission estimates that, by adopting the subject amendment, the number of daily position reports (i.e., series '01 reports) filed by reporting firms for the four commodities would decrease by about 33 percent. There would also be a proportionate decrease in the number of form 102's filed by firms and form 40's filed by large traders. Market coverage represented by the percent of total open interest reported through the large trader system in the subject commodities, however, is estimated to decline on average by no more than 5 percent on either the long or short side of the market.

Exchanges which trade these four commodities also maintain large trader reporting systems that are similar in most respects to that operated by the Commission. All of the exchange systems rely on routine position and account identification reports from member firms similar to the Commission's series '01 reports and form 102s. As part of the current review, Commission and exchange surveillance staff have discussed the potential

[1] Firms which carry accounts for traders who hold "reportable positions" are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the contract market specified in the call.

impact of these rule amendments on exchange surveillance programs. Exchange staff are in agreement that the new levels will provide adequate coverage for market surveillance.

II. Related Matters

A. Notice and Comment

The Administrative Procedure Act, 5 U.S.C. 553(b), requires, in most instances, that a notice of proposed rulemaking be published in the **Federal Register**, and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, when the agency, for good cause, finds (and incorporates the findings and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The Commission finds that notice and public comments on the rule changes announced herein are unnecessary, because the amendments are routine determinations made by the Commission with respect to futures contracts that experience a growth in activity. These routine determinations are made to adjust reporting levels, when increasing activity in the market leads to the receipt by the Commission of a larger number of reports than is necessary for efficient surveillance of the market. In this regard, it should be further noted that these amendments do not establish any new obligations under the Act. On the contrary, these changes simplify compliance with the Act by reducing persons' reporting obligations under the rules in question.

B. The Regulatory Flexibility Act (RFA)

The RFA requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders and FCMs, and other similar entities, such as foreign brokers and foreign traders. The Commission has defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618–18621 [April 30, 1982].

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the amendments to reporting requirements fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable (i.e., large) positions. In addition, these amendments relieve a regulatory burden. Accordingly, the amendments have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to § 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act (PRA)

The PRA, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule and its associated information collection requirements to the Office of Management and Budget (OMB). OMB approved the collection of information associated with this rule in June 1993, and assigned OMB control number 3038–0009 to the rule. The burden associated with this entire collection, including this amended rule, is as follows:

Average Burden Hours Per Response.	0.19
Number of Respondents	4,584
Frequency of Response	Daily

Persons wishing to comment on the information which would be required by these rules should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC, 20503, (202) 395–7304. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW, Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1990), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for Part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is revised to read as follows:

§ 15.03 Quantities Fixed for Reporting.

The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	750,000
Soybeans (bushels)	500,000
Oats (bushels)	300,000
Cotton (bales)	5,000
Frozen Concentrated Orange Juice (contracts)	50
Soybean oil (contracts)	175
Soybean meal (contracts)	175
Live cattle (contracts)	100
Feeder cattle (contracts)	50
Hogs (contracts)	50
Sugar No. 11 (contracts)	300
Sugar No. 14 (contracts)	100
Cocoa (contracts)	100
Coffee (contracts)	50
Copper (contracts)	100
Gold (contracts)	200
Silver bullion (contracts)	150
Platinum (contracts)	50
No. 2 heating oil (contracts)	250
Crude Oil, sweet (contracts)	300
Unleaded gasoline (contracts)	150
Natural gas (contracts)	100
Long-term U.S. Treasury bonds (contracts)	500
GNMA (contracts)	100
Three-month (13 week) U.S. Treasury bills (contracts)	150
Long-term U.S. Treasury notes (contracts)	500
Medium-term U.S. Treasury notes (contracts)	300
Short-term U.S. Treasury notes (contracts)	200
Three-month Eurodollar time deposit rates (contracts)	850
Thirty-Day Interest Rates (contracts)	100
One-Month Labor Rates (contracts)	100
Foreign currencies (contracts)	200
U.S. Dollar Index (contracts)	50
Standard and Poor's 500 stock price index (contracts)	300
New York Stock Exchange composite index (contracts)	50
Amex major market index-maxi (contracts)	100
Nikkei stock index (contracts)	50
Municipal bonds (contracts)	100
Value line average index (contracts)	50
All other commodities (contracts)	25

Issued in Washington, DC, this 15th day of December 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–31258 Filed 12–22–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8576]

RIN 1545–AR64

Definition of Sewage Facilities for Tax-exempt Bond Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations on the definition of sewage facilities. These regulations reflect changes to the law made by the Tax Reform Act of 1986 and affect taxpayers who seek tax-exempt bond financing for sewage facilities.

DATES: These regulations are effective on December 23, 1994.

For dates of applicability of these regulations, see § 1.142(a)(5)–1(e).

FOR FURTHER INFORMATION CONTACT: Joanne E. Johnson at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules under section 142(a)(5) of the Internal Revenue Code of 1986 (Code) allowing tax-exempt, private activity bond financing for sewage facilities.

On May 3, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking (59 FR 22773 [PS–34–93]) defining sewage facilities under section 142(a)(5). A number of written comments were received concerning the proposed regulations, and a public hearing was held on July 26, 1994. After consideration of all the written and oral comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

In General

The final regulations define a sewage facility for purposes of section 142(a)(5) of the Code. Many commentators, including the United States Environmental Protection Agency, recommended expanding the definition of a sewage facility to include property for advanced or tertiary treatment. Commentators suggested that additional treatment of these types is often necessary due to the condition of the receiving water, rather than the characteristics of the influent wastewater. In response to this comment, the final regulations provide that qualifying sewage facilities include certain property used for advanced or tertiary treatment.

Several commentators suggested modifying or eliminating the biochemical oxygen demand (BOD) limit contained in the proposed regulations because they believe that property that performs a sewage treatment function should qualify regardless of the BOD level of the wastewater. Other commentators maintained that the BOD limit undermines current water conservation policy and may be subject to manipulation. Clarification was also requested regarding the particular point in the sewage treatment process that the BOD limit must be measured.

The BOD limit has been retained in the final regulations because it reasonably approximates the upper limit of the average daily raw wasteload concentration for most publicly owned treatment works and generally distinguishes between water pollution control and sewage treatment. However, the BOD limit has been modified in response to the comments received. The BOD limit does not apply if the failure to satisfy the limit results from the implementation of federal, state, or local water conservation measures. The final regulations also clarify that determination of the BOD limit is measured at the time the influent enters the sewage facility. Finally, an anti-abuse rule has been added to prevent distortions of BOD levels designed to circumvent the BOD limit.

While some commentators requested that tax-exempt, private activity bond financing be permitted for pretreatment property, the final regulations retain the rule contained in the proposed regulations that excluded pretreatment property from the definition of a sewage facility. The IRS and Treasury have concluded that pretreatment property is more in the nature of water pollution control property, which is ineligible for tax-exempt, private activity bond financing.

In response to comments, the final regulations clarify that sewage disinfection property is functionally related and subordinate to property qualifying for tax-exempt, private activity bond financing as a sewage facility. Furthermore, some commentators advised that it was not clear under the proposed regulations whether septage treatment property qualified as a sewage facility. The final regulations clarify that, since sewage sludge, as defined under 40 CFR 122.2, includes septage, septage treatment property qualifies as a sewage facility. In addition, under the final regulations septage treatment property is not subject to the BOD limit.

Finally, in light of potential future technological advances in wastewater treatment, the final regulations provide that the Commissioner may determine that facilities using technologically advanced or innovative processes qualify as sewage facilities if these facilities perform functions that are consistent with the definition of sewage facilities contained in the final regulations.

Effective Date

The final regulations apply to issues of bonds issued after February 21, 1995. A transitional rule is provided for certain refundings.

Special Analyses

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

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.142(a)(5)–1 is added to read as follows:

§ 1.142(a)(5)–1 Exempt facility bonds: Sewage facilities.

(a) *In general.* Under section 103(a), a private activity bond is a tax-exempt

bond only if it is a qualified bond. A qualified bond includes an exempt facility bond, defined as any bond issued as part of an issue 95 percent or more of the net proceeds of which are used to provide a facility specified in section 142. One type of facility specified in section 142(a) is a sewage facility. This section defines the term *sewage facility* for purposes of section 142(a).

(b) *Definitions*—(1) *Sewage facility defined.* A sewage facility is property—

(i) Except as provided in paragraphs (b)(2) and (d) of this section, used for the secondary treatment of wastewater; however, for property treating wastewater reasonably expected to have an average daily raw wasteload concentration of biochemical oxygen demand (BOD) that exceeds 350 milligrams per liter as oxygen (measured at the time the influent enters the facility) (the *BOD limit*), this paragraph (b)(1)(i) applies only to the extent the treatment is for wastewater having an average daily raw wasteload concentration of BOD that does not exceed the BOD limit;

(ii) Used for the preliminary and/or primary treatment of wastewater but only to the extent used in connection with secondary treatment (without regard to the BOD limit described in paragraph (b)(1)(i) of this section);

(iii) Used for the advanced or tertiary treatment of wastewater but only to the extent used in connection with and after secondary treatment;

(iv) Used for the collection, storage, use, processing, or final disposal of—

(A) Wastewater, which property is necessary for such preliminary, primary, secondary, advanced, or tertiary treatment; or

(B) Sewage sludge removed during such preliminary, primary, secondary, advanced, or tertiary treatment (without regard to the BOD limit described in paragraph (b)(1)(i) of this section);

(v) Used for the treatment, collection, storage, use, processing, or final disposal of septage (without regard to the BOD limit described in paragraph (b)(1)(i) of this section); and

(vi) Functionally related and subordinate to property described in this paragraph (b)(1), such as sewage disinfection property.

(2) *Special rules and exceptions*—(i) *Exception to BOD limit.* A facility treating wastewater with an average daily raw wasteload concentration of BOD exceeding the BOD limit will not fail to qualify as a sewage facility described in paragraph (b)(1) of this section to the extent that the failure to satisfy the BOD limit results from the implementation of a federal, state, or local water conservation program (for example, a program designed to promote water use efficiency that results in BOD concentrations beyond the BOD limit).

(ii) *Anti-abuse rule for BOD limit.* A facility does not satisfy the BOD limit if there is any intentional manipulation of the BOD level to circumvent the BOD limit (for example, increasing the volume of water in the wastewater before the influent enters the facility with the intention of reducing the BOD level).

(iii) *Authority of Commissioner.* In appropriate cases upon application to the Commissioner, the Commissioner may determine that facilities employing technologically advanced or innovative treatment processes qualify as sewage facilities if it is demonstrated that these facilities perform functions that are consistent with the definition of sewage facilities described in paragraph (b)(1) of this section.

(3) *Other applicable definitions*—(i) *Advanced or tertiary treatment* means the treatment of wastewater after secondary treatment. Advanced or tertiary treatment ranges from biological treatment extensions to physical-chemical separation techniques such as denitrification, ammonia stripping, carbon adsorption, and chemical precipitation.

(ii) *Nonconventional pollutants* are any pollutants that are not listed in 40 CFR 401.15, 401.16, or appendix A to part 423.

(iii) *Preliminary treatment* means treatment that removes large extraneous matter from incoming wastewater and renders the incoming wastewater more amenable to subsequent treatment and handling.

(iv) *Pretreatment* means a process that preconditions wastewater to neutralize or remove toxic, priority, or nonconventional pollutants that could adversely affect sewers or inhibit a preliminary, primary, secondary, advanced, or tertiary treatment operation.

(v) *Primary treatment* means treatment that removes material that floats or will settle, usually by screens or settling tanks.

(vi) *Priority pollutants* are those pollutants listed in appendix A to 40 CFR part 423.

(vii) *Secondary treatment* means the stage in sewage treatment in which a bacterial process (or an equivalent process) consumes the organic parts of wastes, usually by trickling filters or an activated sludge process.

(viii) *Sewage sludge* is defined in 40 CFR 122.2 and includes septage.

(ix) *Toxic pollutants* are those pollutants listed in 40 CFR 401.15.

(c) *Other property not included in the definition of a sewage facility.* Property other than property described in paragraph (b)(1) of this section is not a sewage facility. Thus, for example, property is not a sewage facility, or functionally related and subordinate property, if the property is used for pretreatment of wastewater (whether or not this treatment is necessary to perform preliminary, primary, secondary, advanced, or tertiary treatment), or the related collection, storage, use, processing, or final disposal of the wastewater. In addition, property used to treat, process, or use wastewater subsequent to the time the wastewater can be discharged into navigable waters, as defined in 33 U.S.C. 1362, is not a sewage facility.

(d) *Allocation of costs.* In the case of property that has both a use described in paragraph (b)(1) of this section (a sewage treatment function) and a use other than sewage treatment, only the portion of the cost of the property allocable to the sewage treatment function is taken into account as an expenditure to provide sewage facilities The portion of the cost of property allocable to the sewage treatment function is determined by allocating the cost of that property between the property's sewage treatment function and any other uses by any method which, based on all the facts and circumstances, reasonably reflects a separation of costs for each use of the property.

(e) *Effective date*—(1) *In general.* This section applies to issues of bonds issued after February 21, 1995.

(2) *Refundings.* In the case of a refunding bond issued to refund a bond to which this section does not apply, the issuer need not apply this section to that refunding bond. This paragraph (e)(2) applies only if the weighted average maturity of the refunding bonds, as described in section 147(b), is not greater than the remaining weighted average maturity of the refunded bonds.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 2, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–31424 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8581]

RIN 1545–AQ87

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends final regulations governing certain cash or deferred arrangements and employee and matching contributions under employee plans. The amendments add cross-references to final regulations relating to nondiscrimination, minimum coverage, and related requirements, since the publication of the final regulations relating to cash or deferred arrangements and employee and matching contributions. The amendments also make various technical corrections to and clarifications of the final regulations governing cash or deferred arrangements and employee and matching contributions under employee plans, the final regulations relating to plan amendments reducing accrued benefits, and the final regulations relating to maximum contributions and benefits.

EFFECTIVE DATE: These regulations are effective August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez at 202–622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Final regulations under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416, and 4979 of the Internal Revenue Code (Code) were published in the **Federal Register** on August 15, 1991 (56 FR 40507). Amendments to the final regulations were published in the **Federal Register** on December 4, 1991 (56 FR 63420). Minor corrections to the final regulations were published in the **Federal Register** on March 25, 1992 (57 FR 10289), on December 17, 1992 (57 FR 59915), and on March 16, 1993 (58 FR 14150). The final regulations published on August 15, 1991, as amended and corrected on or before March 16, 1993, are referred to herein as "the 1991 Final Regulations."

Proposed amendments to the 1991 Final Regulations were published in the **Federal Register** on August 10, 1992 (57 FR 35536), and on January 4, 1993 (58 FR 43). A minor correction to the amendment proposed on January 4, 1993, was published in the Federal Register on March 22, 1993 (58 FR 15312). The amendments made by this document include these previously proposed amendments.

Explanation of Provisions

1. Coordination With Regulations Under Sections 401(a)(4), 401(a)(17), 410(b), and 414(s)

Final regulations under section 401(a)(4) were published in the **Federal Register** on September 3, 1993 (58 FR 46773). Final regulations under section 401(a)(17) were published in the Federal Register on June 27, 1994 (59 FR 32903). Final regulations under section 410(b) were published in the **Federal Register** on September 19, 1991 (56 FR 47638). Amendments to the regulations under section 410(b) were published in the **Federal Register** on December 4, 1991 (56 FR 63420), September 3, 1993 (58 FR 46835), and June 27, 1994 (59 FR 32911). Final regulations under section 414(s) were published in the **Federal Register** on September 19, 1991 (56 FR 47659). Amendments to the regulations under section 414(s) were published in the **Federal Register** on September 7, 1993 (58 FR 47061).

A number of provisions of the final regulations under sections 401(a)(4) and (17), 410(b), and 414(s) affect plans subject to the regulations governing cash or deferred arrangements and employee and matching contributions. The preamble to the 1991 Final Regulations states that "when final regulations are issued under section 410(b), these [section 410(k) and (m)] regulations will be revised to cross-refer to definitions of common applicability under sections 410(b), 401(k), and 401(m)." (56 FR 40507, 40511 (August 15, 1991)). Therefore, this document amends final regulations under sections 401(k) and (m), 402(g), and 4979 by inserting cross-references to the relevant provisions of the regulations under sections 401(a)(4) and (17), 410(b), and 414(s).

2. Scope of These Amendments

Questions and comments received with respect to the 1991 Final Regulations have suggested that some technical corrections or clarifications would be helpful. Accordingly, in addition to inserting cross-references as described above, the amendments made by this document (referred to herein as the *1994 Amendments*) make a number of technical corrections and clarifications. More significant changes are beyond the scope of this package, but may be considered at a later date. Treasury and the IRS continue to welcome comments concerning the regulations.

3. Use of Term "Section 401(k) Plan" to Reflect Special Nondiscrimination Testing Requirements for QNECs Under Sections 401(a)(4) and 410(b)

Among the terms of common applicability under sections 410(b), 401(k), and 401(m) is the term "section 401(k) plan," which is defined in the regulations under sections 401(a)(4) and 410(b). Those regulations define a "section 401(k) plan" as consisting only of the elective contributions under a qualified cash or deferred arrangement (CODA). See § 1.410(b)–9. Qualified nonelective contributions (QNECs) that are used to pass the actual deferral percentage (ADP) test are not treated as part of a section 401(k) plan under those regulations and must be tested separately for nondiscrimination under sections 401(a)(4) and 410(b). See §§ 1.401(a)(4)–1(b)(2)(ii)(B) and 1.410(b)–7(c)(1). Thus, while QNECs may be used to pass the ADP test (and in fact are included in the definition of a CODA under the section 401(k) regulations at § 1.401(k)–1(b)(4)), they are nonetheless part of a plan separate from the section 401(k) plan for purposes of section 401(a)(4) and 410(b) testing.

These 1994 Amendments incorporate the term "section 401(k) plan" (defined as described above) into several provisions of the 1991 Final Regulations. This is to reflect the requirement (which is unchanged by the 1994 Amendments) for separate testing of QNECs under sections 401(a)(4) and 410(b). Except in the few places in these regulations where the term "section 401(k) plan" has been used, the regulations continue to use the existing term "cash or deferred arrangement" or "CODA" with its current meaning. Thus, incorporation of the term "section 401(k) plan" in selected provisions of the 1994 Amendments does not affect the testing requirements for qualified CODAs, including the two special nondiscrimination testing rules for QNECs in § 1.401(k)–1(b)(5) (i) and (ii).

Under the first of these tests, the QNECs used in the ADP test are aggregated with other nonelective contributions as they would be if they had not been used in the ADP test. In accordance with the final regulations under section 410(b), permitted disparity under section 401(l) may be used to demonstrate that these plan contributions satisfy section 401(a)(4). Under the second test, only those QNECs that are *not* used in the ADP and actual contribution percentage (ACP) tests are taken into account, together

with other nonelective contributions, in determining whether section 401(a)(4) is satisfied. Here too permitted disparity may be used.

A similar term, "section 401(m) plan," has been added by the 1994 Amendments to reflect that QNECs used to pass the ACP test are part of a separate plan for purposes of the nondiscrimination testing required under sections 401(a)(4) and 410(b). Incorporation of the term "section 401(m) plan" does not affect the testing requirements governing employee and matching contributions, including the two special nondiscrimination testing rules in § 1.401(m)–1(b)(5) (i) and (ii) for QNECs used in the ACP test. These testing rules are similar to the special testing rules which apply to QNECs that are used in the ADP test. Thus under the first test, the QNECs used in the ACP test must be tested under section 401(a)(4) by aggregating them with other nonelective contributions. Under the second test, only those QNECs that are not used in the ACP and ADP tests are taken into account, together with other nonelective contributions, for section 401(a)(4) testing purposes. Permitted disparity may also be used under both tests.

As an additional matter, the 1994 Amendments specifically state the rule implicit in the 1991 Final Regulations that the same QNECs may not be used to satisfy both the ADP and the ACP tests. See § 1.401(m)–1(b)(4)(ii)(B).

4. Plans Benefiting Otherwise Excludable Employees

Final regulations under section 410(b) permit separate testing of the portion of a plan benefiting employees who have not satisfied the greatest minimum age and service requirements permitted under section 410(a). See § 1.410(b)–6(b)(3). The 1994 Amendments make clear that a plan may separately test these employees under section 401 (k) or (m) without violating the 1991 Final Regulations' prohibition on restructuring, because this separate testing does not constitute restructuring within the meaning of the section 401(a)(4) regulations. Thus, an employer may treat a plan that benefits employees including otherwise excludable employees as two separate plans (one for the otherwise excludable employees and one for all other eligible employees) for purposes of sections 401 (k) and (m) and 410(b). See §§ 1.401(k)–1(b)(3)(ii) and 1.401(m)–1(b)(3)(ii).

5. Retroactive Correction of Certain Defects

The 1994 Amendments add references to § 1.401(a)(4)– 11(g)(3)(vii), which allows retroactive correction of certain prohibited discrimination in section 401 (k) and (m) plans. Section 1.401(a)(4)–11(g)(3)(vii)(A) permits the sponsor of a section 401(k) or 401(m) plan to amend the plan retroactively to satisfy the section 410(b) minimum coverage requirements by allocating QNECs to nonhighly compensated employees who were not eligible under the plan. Section 1.401(a)(4)–11(g)(3)(vii)(B) permits a plan to allocate QNECs to nonhighly compensated employees pursuant to a retroactive amendment in order to satisfy the nondiscriminatory current availability requirement of § 1.401(a)(4)–4(b) with respect to the right to a rate of matching contributions. Since the amount of the added QNECs is based on the ADP or ACP of the group of nonhighly compensated employees who were eligible before the correction, the addition of these QNECs does not change the calculation of the ADP or ACP or the plan's compliance with the ADP or ACP requirements.

Consistent with the limitations contained in the retroactive correction provisions of § 1.401(a)(4)–11(g), the 1994 Amendments affirm that this section 401(a)(4) retroactive correction method cannot be used to correct excess contributions (amounts that exceed the limits under section 401(k)) or excess aggregate contributions (amounts that exceed the limits under section 401(m)). These contributions may be corrected only in accordance with § 1.401(k)–1(f)(1)(iii) or 1.401(m)–1(e)(1)(iii), respectively. Similarly, excess deferrals (amounts that exceed the limits under section 402(g)) may be corrected only in accordance with § 1.402(g)–1(e).

6. Distributions Upon Plan Termination

Sections 401(k)(2)(B)(i)(II) and 401(k)(10)(A)(i) permit distributions from a qualified CODA after termination of the plan without the establishment or maintenance of a successor plan by the employer. Section 1.401(k)–1(d)(3) provides that if fewer than two percent of the employees who were eligible under the terminated defined contribution plan that included the CODA are eligible under another plan of the employer during a specified 24-month period, the other plan is not a successor plan. The 1994 Amendments clarify that the number of employees who were eligible under the terminated plan and the identity of the employer are determined as of the date of plan termination. See Rev. Rul. 89–87, 1989–2 C.B. 81, regarding the date of plan termination. Thus, for example, if a plan is terminated as of December 31, 1994, and the plan assets are timely distributed thereafter, then the number of employees who were eligible under the plan is determined as of December 31, 1994. The clarifications of the language relating to these successor plan rules, including the two percent test, are not intended to change the rules governing that test in any way.

7. Other Benefits Not Contingent Upon Elective Contributions

Section 401(k)(4)(A) and § 1.401(k)–1(e)(6) of the 1991 Final Regulations provide that a CODA is a qualified CODA only if no other benefit (other than a matching contribution under section 401(m)) is conditioned (directly or indirectly) upon the employee's electing to make or not to make elective contributions. The 1994 Amendments add two examples to § 1.401(k)–1(e)(6) to respond to frequent questions concerning the application of the contingent benefit rule to two specific arrangements involving relationships between a nonqualified deferred compensation plan and a qualified CODA. These examples illustrate the existing rules, and are not intended to change those rules in any way.

8. Coordination of Excess Deferrals With Excess Contributions

The 1994 Amendments amend *Example 2* in § 1.402(g)–1(e)(11) to reflect more accurately the rules that coordinate the correction of excess deferrals and excess contributions. Under these rules, excess deferrals that have been distributed to a highly compensated employee serve the purpose of reducing the amount to be distributed as an excess deferral and excess contribution. See §§ 1.401(k)–1(f)(5); 1.402(g)–1(e)(1)(ii). Conversely, excess contributions that have been distributed to a highly compensated employee reduce both the excess contribution and the amount to be distributed as an excess deferral. See §§ 1.401(k)–1(f)(5); 1.402(g)–1(e)(6). The statement in *Example 2* that further correction was required to pass the ADP test under the facts of the example was inaccurate and has been deleted.

9. Distribution of Matching Contributions Related to Excess Deferrals, Excess Contributions, and Excess Aggregate Contributions

Questions have been raised about the extent to which a matching contribution may be distributed if it relates to an amount that is distributed as an excess contribution, excess deferral, or excess aggregate contribution. Distribution of excess deferrals, excess contributions, or excess aggregate contributions may cause matching contributions related to the distributed amounts to be

discriminatory by producing an effective rate of match that discriminates in favor of highly compensated employees. See § 1.401(a)(4)–4(e)(3)(G).

There are two circumstances under which a matching contribution may be distributed. First, it may be distributed if it is an excess aggregate contribution. In this case, the matching contribution will not be taken into account under section 401(a)(4). Thus, it will not be considered in determining whether there is a discriminatory rate of match. Second, the matching contribution may be distributed on some other permissible basis under the general plan qualification rules applicable to the type of plan under which the matching contribution was made, e.g., attainment of age 59½ under a profit-sharing or stock bonus plan. However, in that case, the amount contributed would still be taken into account under section 401(a)(4), and therefore the distribution, even if timely made, would not correct any failure to satisfy a nondiscrimination requirement, including a discriminatory rate of match. Section 1.401(m)–1(e)(4) has been amended to make this explicit. The 1994 Amendments also explicitly state that a matching contribution may not be distributed simply because it relates to an excess deferral, an excess contribution, or an excess aggregate contribution that is distributed. See § 1.401(m)–1(e)(3)(vii).

Where a matching contribution relates to an excess deferral, an excess contribution, or an excess aggregate contribution that is distributed, a discriminatory rate of match may result, unless the matching contribution is distributed as an excess aggregate contribution. If the matching contribution cannot be distributed as an excess aggregate contribution, so that the discriminatory rate of match cannot be corrected by distribution, a plan may provide that the matching contributions are forfeited, as permitted by sections 411(a)(3)(G) and 401(k)(8)(E). See §§ 1.401(k)–1(f)(5)(iii); 1.401(m)–1(e)(4); 1.411(a)–4(b)(7). Alternatively, the discriminatory rate of match can be corrected by additional allocations to the accounts of nonhighly compensated employees, under § 1.401(a)(4)–11(g)(3)(vii)(B).

10. Multiple Use Test

The 1991 Final Regulations, as amended by the 1994 Amendments, continue to provide that if any highly compensated employee is eligible to participate in both a section 401(k) plan and a section 401(m) plan of an employer, the plans must satisfy the limitation on multiple use of the alternative methods of compliance with the ADP and ACP tests (the 200%/two-percentage-point method, as opposed to the 125% method) that are contained in sections 401(k)(3)(A)(ii)(II) and 401(m)(2)(A)(ii), respectively. Language has been added to § 1.401(m)–1(a)(1) to clarify that if the plans fail to satisfy the multiple use limitation in operation, and the failure is not corrected as permitted by § 1.401(m)–2(c), the section 401(m) plan fails to satisfy section 401 (a)(4) and (m).

An additional clarification in the multiple use rules has been added to § 1.401(m)–2(c)(1). The 1991 Final Regulations provide that multiple use may be corrected by reducing either the ADP or the ACP of the highly compensated employees. The 1994 Amendments clarify that multiple use may also be corrected by reducing a combination of the ADP and the ACP of the highly compensated employees.

11. Safe Harbor Hardship Withdrawal Provisions

In response to suggestions, the 1994 Amendments expand the safe harbor hardship withdrawal provisions to provide that, in addition to tuition and related educational fees, amounts distributed for the payment of room and board expenses for the next 12 months of post-secondary education will be deemed to be on account of an immediate and heavy financial need. See § 1.401(k)–1(d)(2)(iv)(A)(3).

12. Hardship Distributions Under Profit-Sharing or Stock Bonus Plans

The 1991 Final Regulations added § 1.411(d)–4, Q&A–2(b)(2)(x) to make an exception to the protections of section 411(d)(6) and allow a qualified CODA that permits hardship distributions to be amended to specify or modify its standards for making such distributions, or to eliminate hardship distributions. In response to suggestions, the 1994 Amendments now amend this section to allow the same flexibility to any profit-sharing or stock bonus plan that permits hardship distributions. Under this amendment, a profit-sharing or stock bonus plan has this flexibility whether or not the plan limits hardship distributions (either before or after the plan amendment) to the types of hardship distributions that are permitted to be made from a qualified CODA. Hardship distributions under a portion of the plan that is a qualified CODA must be restricted in accordance with section 401(k) and the regulations.

13. Excise Tax Transition Relief for Collectively Bargained and Governmental Plans

In accordance with the applicable provisions of the Code, the 1991 Final Regulations provide that elective contributions under a CODA that is part of a collectively bargained plan and that fails the ADP test are includible in employees' gross incomes because the CODA is not qualified. The 1991 Final Regulations provided transition relief by not making this income inclusion effective for plan years beginning before January 1, 1993.

The question has arisen whether this transition relief from income inclusion for collectively bargained plans would be expanded to cover the section 4979 excise tax on excess contributions. The 1994 Amendments respond by amending § 54.4979–1(d)(3) to provide that the excise tax does not apply to a collectively bargained plan for plan years beginning before January 1, 1993. Thus, for these plan years, a collectively bargained plan need not perform the ADP test for any purpose. Furthermore, the 1994 Amendments explicitly provide that the excise tax does not apply to employee and matching contributions under a collectively bargained plan.

For governmental plans, the nondiscrimination rules, including the nondiscrimination requirements under sections 401(k) and 401(m), generally do not apply for plan years beginning before January 1, 1996. The proposed amendments to the 1991 Final Regulations reflected this extended effective date. The 1994 Amendments adopt the proposed amendments and also apply the same extended effective date to the section 4979 excise tax.

14. One-Time Irrevocable Elections

The 1991 Final Regulations provide that an employer may allow each of its employees to make a one-time irrevocable election, upon commencement of employment or initial eligibility under any plan of the employer, to have a specified amount or percentage of compensation (including no amount) contributed by the employer throughout the employee's employment. This type of election is not treated as a cash or deferred election. See § 1.401(k)–1(a)(3)(iv).

The question has occasionally been raised as to whether such an election could conceivably be made by an employee upon first becoming eligible under a plan even though the employee had previously become eligible under any other ongoing or terminated plan of the employer. The 1994 Amendments

make clear that the answer to this question is in the negative. They confirm that the one-time irrevocable election provision was intended to preclude an election from constituting a non-cash-or-deferred election (and thus avoiding the rules governing qualified CODAs) in any case where the electing employee had previously become eligible under another plan of the employer, including a terminated plan, even if the employee is making an election with respect to a plan under which the employee is just then becoming eligible. Thus, an employee can make an election under § 1.401(k)–1(a)(3)(iv) only once during employment with a particular employer (even if, over time, the employee becomes eligible under more than one plan of the employer). This election can be made either (1) upon commencement of employment with the employer, or (2) upon becoming eligible under the plan of the employer under which the employee becomes eligible first.

The 1991 Final Regulations reiterated a special, additional, one-time election transition rule for plans maintained by partnerships. See § 1.401(k)–1(a)(6)(ii)(C). This transition relief originally had been provided for under Notice 88–127, 1988–2 C.B. 538. See also Rev. Proc. 91–47, 1991–2 C.B. 757. As an alternative to compliance by a plan with the qualified CODA rules, the transition rule was intended to give existing partnership plans a limited period of time (until the later of the first day of the first plan year beginning after December 31, 1988, or March 31, 1989) for employees and partners to make one-time irrevocable elections, even after their commencement of employment or their initial eligibility under the plan or any other plan of the employer. However, occasional questions have been raised since 1989 as to whether this could nonetheless be interpreted as a continuing transition rule for partnerships that might permit such one-time irrevocable elections to be made in the future. The 1994 Amendments explicitly confirm that such elections under the special partnership transition rule may not be made in the future. A partnership may, of course, continue to allow partners and employees to make one-time irrevocable elections under the general rule of § 1.401(k)–1(a)(3)(iv) in the same limited circumstances as any other employer.

15. Limit on Annual Additions

a. Corrective Distribution of Elective Deferrals

The 1991 Final Regulations amended § 1.415–6(b)(6) to allow plans to distribute elective deferrals to correct excess annual additions resulting from a reasonable error in determining the amount of elective deferrals that a participant may make under the limits of section 415. A question has arisen as to whether gains (investment gains and other income) attributable to the distributed elective deferrals are treated for section 415 purposes in a manner similar to gains attributable to employee contributions that are returned pursuant to § 1.415–6(b)(6) (which have been explicitly addressed in that regulation since before 1991). The 1994 Amendments make clear that similar treatment is intended, by providing that if gains attributable to the distributed elective deferrals are not also distributed to the employee, the gains will be considered as employer contributions for the limitation year in which the distributed elective deferrals were made. This provision of the 1994 Amendments is effective for limitation years beginning after December 31, 1995.

b. Plan Amendments Reducing Accrued Benefits to Comply With Tax Reform Act of 1986

The Tax Reform Act of 1986 (TRA '86) generally reduced the amount of benefits that could be provided by a defined benefit plan under the section 415 benefit limitations. The changes generally were effective for limitation years beginning after December 31, 1986. However, section 1106(i)(3) of TRA '86 protected the "current accrued benefit" of an individual who was a participant in a defined benefit plan meeting certain requirements. The "current accrued benefit" was defined as the benefit that accrued before the effective date, not including any benefits under new plans or any benefits resulting from changes in existing plans after May 5, 1986. These additional accruals generally caused plan disqualification when the new limits applied. Notice 87–21, 1987–1 C.B. 458, Q&A–13, illustrated this effect and stated that future regulations would provide section 411(d)(6) relief allowing defined benefit plans to reduce accrued benefits that otherwise would violate the applicable limit. This relief would create an exception to the general section 411(d)(6) prohibition against plan amendments reducing accrued benefits.

Q&A–17 of Notice 87–21 illustrated that these additional accruals could also result in a violation of the combined limit on contributions and benefits under section 415(e). The combined limit applies to participants covered by both a defined benefit plan and a defined contribution plan. Such a violation could occur even if the defined benefit plan was terminated before the effective date of the section 415 changes, and even if no contributions were made to the defined contribution plan after the effective date.

The 1991 Final Regulations added § 1.411(d)–4, Q&A–2(b)(2)(xi) to permit a defined benefit plan to reduce benefits that otherwise would violate the lower section 415(b) limit under TRA '86. These 1994 Amendments now expand this relief by allowing a reduction in benefits under either a defined benefit plan or a defined contribution plan to satisfy the combined limit under section 415(e), which also was reduced as a result of the changes made by TRA '86. This amendment to § 1.411(d)–4, Q&A–2(b)(2)(xi), will also allow a defined contribution plan to reduce a participant's account balance where the defined benefit plan has been terminated and thus can no longer be amended to reduce the participant's benefits. See also § 1.415–6(b)(6), providing methods for correcting excess annual additions to defined contribution plans in certain circumstances.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)(3) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(k)–0 is amended as follows:

1. The entries for § 1.401(k)–1, paragraph (b)(3) and (b)(3)(i) and (ii) are revised.
2. The entries for § 1.401(k)–1, paragraph (b)(3)(ii)(A) and (B), and (b)(3)(iii) and (iv) are removed.
3. The entry for § 1.401(k)–1 paragraph (b)(4)(ii) is revised.
4. An entry for § 1.401(k)–1, paragraph (e)(6)(vi) is added.
5. The entries for § 1.401(k)–1, paragraph (g)(11)(i) and (ii) are revised.
6. Entries for § 1.401(k)–1, paragraphs (g)(11)(ii)(A) through (C) are added.
7. The entries for § 1.401(k)–1, paragraphs (g)(11)(iii), (g)(11)(iii)(A) through (D), (g)(11)(iii)(D)(*1*) and (*2*), and (g)(11)(iv) are removed.
8. Entries for § 1.401(k)–1, paragraph (g)(15) and (16) are added.
9. The entry for § 1.401(k)–1, paragraph (h)(4)(ii) is revised.

The added and revised entries read as follows:

§ 1.401(k)–0 Certain cash or deferred arrangements, table of contents.

* * * * *

§ 1.401(k)–1 * * *

* * * * *

(b) * * *

(3) Aggregation.

(i) Aggregation of arrangements and plans.

(ii) Restructuring and Permissive Aggregation.

(4) * * *

(ii) Elective contributions and qualified nonelective contributions used to satisfy actual contribution percentage test.

* * * * *

(e) * * *

(6) * * *

(vi) Examples.

* * * * *

(g) * * *

(11) * * *

(i) Application of section 410(b) rules.

(ii) Modifications to section 410(b) rules.

(A) In general.

(B) Plans benefiting collective bargaining unit employees.

(C) Multiemployer plans.

* * * * *

(15) Section 401(k) plan.

(16) Section 401(m) plan.

(h) * * *

(4) * * *

(ii) Plan years beginning before January 1, 1996.

* * * * *

Par. 3. Section 1.401(k)–1 is amended as follows:

1. Paragraph (a) is amended as follows:

i. Paragraph (a)(3)(iv) is amended by adding a sentence immediately before the last sentence.

ii. Paragraph (a)(3)(v) is revised.

iii. Paragraph (a)(3)(vi), *Example 3*, is added.

iv. Paragraphs (a)(4)(ii) and (iv), (a)(5)(iv), (a)(6)(ii)(C), and (a)(7)(i) are revised.

2. Paragraph (b) is amended as follows:

i. Paragraphs (b)(1)(i), (ii), and (b)(3) are revised.

ii. Paragraph (b)(4)(ii) heading is revised and a sentence is added at the end of the paragraph.

iii. Paragraphs (b)(4)(iv), (b)(5)(i) and (ii) are amended by adding a sentence at the end of each paragraph.

iv. Paragraph (b)(5)(vi) is revised.

v. Paragraph (b)(6) is amended by:

a. Revising *Example 2*, paragraph (i).

b. Revising *Example 3*, paragraph (i).

c. Revising *Example 4*, paragraph (i).

3. Paragraph (d) is amended as follows:

i. Paragraphs (d)(2)(iv)(A)(*3*), (d)(3), and (d)(4)(i) are revised.

ii. The last sentence of paragraph (d)(5) is revised.

iii. A sentence is added at the end of paragraph (d)(6)(iv).

4. Paragraph (e) is amended as follows:

i. A sentence is added at the end of paragraph (e)(6)(ii).

ii. Paragraph (e)(6)(vi) is added.

iii. Paragraph (e)(7) is revised.

5. Paragraph (f) is amended as follows:

i. Paragraphs (f)(1)(iii), (f)(2), (f)(3)(ii), and (f)(3)(iii)(C) are revised.

ii. In paragraph (f)(3)(v), paragraph (i) of the *Example* is revised.

iii. Paragraph (f)(4)(ii)(B) is revised.

iv. Paragraph (f)(7), paragraph (i) of *Example 1*, and *Examples 2* and *3* are revised.

6. Paragraph (g) is amended as follows:

i. Paragraphs (g)(1)(ii)(B)(*1*) and (C)(*1*), and (g)(2)(i) are revised.

ii. A sentence is added at the end of paragraph (g)(4)(ii).

iii. Paragraphs (g)(5), (6) and (11) are revised.

iv. Paragraphs (g)(15) and (16) are added.

7. Paragraphs (h)(3)(iii) (A) and (B)(2), and (h)(4)(ii) are revised.

The added and revised provisions read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

(a) * * *

(3) * * *

(iv) * * * In no event is an election made after December 23, 1994 treated as one-time irrevocable election under this paragraph if the election is made by an employee who previously became eligible under another plan (whether or not terminated) of the employer. * * *

(v) *Tax treatment of employees.* An amount generally is includible in an employee's gross income for the taxable year in which the employee actually or constructively receives the amount. But for section 402(e)(3) and section 401(k), an employee is treated as having received an amount that is contributed to a plan pursuant to the employee's cash or deferred election. This is the case even if the election to defer is made before the year in which the amount is earned, or before the amount is currently available. See § 1.402(a)–1(d).

(vi) * * *

* * * * *

Example 3. (i) Employer A establishes a qualified money purchase pension plan in 1986. This is the first qualified plan established by Employer A. All salaried employees are eligible to participate under the plan. Hourly-paid employees are not eligible to participate under the plan. In 1996, Employer A establishes a profit-sharing plan under which all employees (both salaried and hourly) are eligible. Employer A permits all employees on the effective date of the profit-sharing plan to make a one-time irrevocable election to have Employer A contribute five percent of compensation on their behalf to the plan and to any other plan of Employer A (including plans not yet established) for the duration of the employee's employment with Employer A, and have their salaries reduced by five percent.

(ii) The election provided under the profit-sharing plan is not a one-time irrevocable election within the meaning of § 1.401(k)–1(a)(3)(iv) with respect to the salaried employees of Employer A who, at any time before becoming eligible to participate under the profit-sharing plan, became eligible to participate under the money purchase pension plan. The election under the profit-sharing plan is a one-time irrevocable election within the meaning of § 1.401(k)–1(a)(3)(iv) with respect to the hourly employees, because they were not previously eligible to participate under another plan of the employer.

(4) * * *

(ii) *Treatment of elective contributions as employer contributions.* Except as provided in paragraph (f) of this section, elective contributions

under a qualified cash or deferred arrangement are treated as employer contributions. Thus, for example, elective contributions are treated as employer contributions for purposes of sections 401(a) and 401(k), 402, 404, 409, 411, 412, 415, 416, and 417.

* * * * *

(iv) *Application of nondiscrimination requirements to plan that includes a qualified cash or deferred arrangement.* A plan that includes a qualified cash or deferred arrangement must satisfy the requirements of sections 401(a)(4) and 410(b). Thus, for example, the plan must satisfy section 401(a)(4) with respect to the amount of contributions or benefits and the availability of benefits, rights and features under the plan. See § 1.401(a)(4)–1(b)(3). The right to make each level of elective contributions under a cash or deferred arrangement is a benefit, right or feature subject to this requirement, and each of these rights must therefore generally be available to a group of employees that satisfies section 410(b). See § 1.401(a)(4)–4(e)(3)(i) and (iii)(D). Thus, for example, if all employees are eligible to make a stated level of elective contributions under a cash or deferred arrangement, but that level of contributions can only be made from compensation in excess of a stated amount, such as the Social Security taxable wage base, the arrangement will generally favor highly compensated employees with respect to the availability of elective contributions and thus will generally not satisfy the requirements of section 401(a)(4). For plan years beginning after December 31, 1984, the amount of elective contributions under a qualified cash or deferred arrangement satisfies the requirements of section 401(a)(4) only if the amount of elective contributions satisfies the special nondiscrimination test of section 401(k)(3) and paragraph (b)(2) of this section. See § 1.401(a)(4)–1(b)(2)(ii)(B). See also § 1.401(a)(4)–11(g)(3)(vii)(A), relating to corrective amendments that may be made to satisfy the minimum coverage requirements of section 410(b).

(5) * * *

(iv) *Qualification of plan that includes a nonqualified cash or deferred arrangement.* A profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan does not fail to satisfy the requirements of section 401(a) merely because the plan includes a nonqualified cash or deferred arrangement. In determining whether the plan satisfies the requirements of section 401(a)(4), the special nondiscrimination tests of sections 401(k)(3) and 401(m)(2) may not be used. See §§ 1.401(a)(4)–1(b)(2)(ii)(B) and 1.410(b)–9 (definition of section 401(k) plan).

(6) * * *

(ii) * * *

(C) *Transition rule for partnership cash or deferred elections.* A one-time irrevocable election to participate or not to participate in a plan in which partners may participate is not a cash or deferred election if the election was made on or before the later of the first day of the first plan year beginning after December 31, 1988, or March 31, 1989. This election may be made after the commencement of employment or after the employee's first becoming eligible under any plan of the employer. In no event, however, may the election be made after December 23, 1994. The election may be made even if the one-time irrevocable election in § 1.401(k)–1(a)(3)(iv) was previously made.

* * * * *

(7) * * * (i) *In general.* The amount of employer contributions under a nonqualified cash or deferred arrangement is treated as satisfying section 401(a)(4) if the arrangement is part of a collectively bargained plan (including a plan adopted by a state or local government before May 6, 1986) that automatically satisfies the requirements of section 410(b). See §§ 1.401(a)(4)–1(c)(5) and 1.410(b)–2(b)(7). Except as specifically provided otherwise, elective contributions under the arrangement are treated as employer contributions. See § 1.401(k)–1(a)(5)(ii). However, elective contributions under the nonqualified cash or deferred arrangement are treated as employee contributions for purposes of section 402(a) for plan years beginning after December 31, 1992, and are therefore not excludable from gross income under section 402(e)(3). See § 1.402(a)–1(d)(3)(iv).

* * * * *

(b) * * *

(1) * * *

(i) The group of eligible employees under the section 401(k) plan and the group of employees benefiting under the plan to which the nonelective employer contributions are made separately satisfy the requirements of section 410(b) (including the average benefit percentage test, if applicable). For special rules governing the application of section 410(b) to a cash or deferred arrangement, see §§ 1.410(b)–7(c)(1) and 1.410(b)–8(a)(1). See also § 1.401(a)(4)–11(g)(3)(vii)(A), relating to corrective amendments that may be made to satisfy the minimum coverage requirements of section 410(b).

(ii) The cash or deferred arrangement satisfies the actual deferral percentage test described in paragraph (b)(2) of this section. This is the exclusive nondiscrimination test applicable to the amount of elective contributions under a qualified cash or deferred arrangement. See § 1.401(a)(4)–1(b)(2)(ii)(B).

* * * * *

(3) *Aggregation*—(i) *Aggregation of arrangements and plans.* Except as otherwise specifically provided in this paragraph (b)(3), all cash or deferred arrangements included in a plan are treated as a single cash or deferred arrangement. Thus, for example, if two groups of employees are eligible for separate cash or deferred arrangements under the same plan, the two cash or deferred arrangements are treated as a single cash or deferred arrangement, even if they have significantly different features, such as significantly different limits on elective contributions. See § 1.401(k)–1(g)(11) for the definition of plan used for purposes of this section. That definition contains the exclusive rules for aggregation and disaggregation of plans for purposes of this section. See also paragraph (g)(1)(ii) of this section for rules requiring the aggregation of elective contributions under two or more plans in computing the actual deferral ratios of certain employees.

(ii) *Restructuring and Permissive Aggregation.* Effective for plan years beginning after December 31, 1991, restructuring under § 1.401(a)(4)–9(c) may not be used to demonstrate compliance with the requirements of section 401(k). See § 1.401(a)(4)–9(c)(3)(ii). For plan years beginning before January 1, 1992, see § 1.401(k)–1(h)(3)(iii). An employer may, however, treat a plan benefiting otherwise excludable employees as two separate plans for purposes of sections 401(k) and 410(b) in accordance with §§ 1.410(b)–6(b)(3) and 1.410(b)–7(c)(3).

(4) * * *

(ii) *Elective contributions and qualified nonelective contributions used to satisfy actual contribution percentage test.* * * * A qualified nonelective contribution that is treated as a matching contribution is subject to the actual contribution percentage test of section 401(m)(2) and is not taken into account as an elective contribution under paragraph (b)(2) or (5) of this section.

* * * * *

(iv) * * * See §§ 1.401(a)(4)–1(b)(2)(ii)(B); 1.410(b)–7(c)(1).

(5) * * *

(i) * * * See § 1.401(a)(4)–1(b)(2).

(ii) * * * See § 1.401(a)(4)–1(b)(2).

* * * * *

(vi) For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, the section 401(k) plan and the plan or plans to which the qualified nonelective contributions and qualified matching contributions are made, could be aggregated under § 1.410(b)–7(d) after application of the mandatory disaggregation rules of § 1.410(b)–7(c), as modified in § 1.401(k)–1(g)(11). If the plan year of the section 401(k) plan is changed to satisfy the requirement under § 1.410(b)–7(d)(5) that aggregated plans have the same plan year, the qualified nonelective contributions and qualified matching contributions may be taken into account in the resulting short plan year only if the contributions satisfy the requirements of paragraph (b)(4)(i) of this section with respect to the short year as if the contributions were elective contributions and the aggregated plans could otherwise be aggregated for purposes of section 410(b).

(6) * * *

* * * * *

Example 2. (i) The facts are the same as in *Example 1*, except that elective contributions are made pursuant to a salary reduction agreement and no bonuses are paid. Employer X includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). In addition, A defers $2,025. Thus, the compensation and elective contributions for A, B, and C are:

Employee	Compensation	Elective contributions	Actual deferral ratio (percent)
A	$30,000	$2,025	6.75
B	15,000	750	5.00
C	10,000	450	4.50

* * * * *

Example 3. (i) Employees D through L are eligible employees in Employer A's profit-sharing plan that contains a cash or deferred arrangement. Employer A includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). Each eligible employee may elect to defer up to six percent of compensation under the cash or deferred arrangement. Employees D and E are highly compensated. The compensation, elective contributions, and actual deferral ratios of these employees for the 1989 plan year are shown below:

Employee	Compensation	Elective contributions	Actual deferral ratio (percent)
D	$100,000	$6,000	6
E	80,000	4,000	5
F	60,000	3,600	6
G	40,000	1,600	4
H	30,000	1,200	4
I	20,000	600	3
J	20,000	600	3
K	10,000	300	3
L	5,000	150	3

* * * * *

Example 4. (i) Employer D maintains a profit-sharing plan that contains a cash or deferred arrangement. Employer D includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). The following amounts are contributed under the plan:

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) * * *

(3) Payment of tuition, related educational fees, and room and board expenses, for the next 12 months of post-secondary education for the employee, or the employee's spouse, children, or dependents (as defined in section 152); or

* * * * *

(3) *Rules applicable to distributions upon plan termination.* A distribution may not be made under paragraph (d)(1)(iii) of this section if the employer establishes or maintains a successor plan. For purposes of this rule, the definition of the term "employer" contained in paragraph (g)(6) of this section is applied as of the date of plan termination, and a successor plan is any other defined contribution plan maintained by the same employer. However, if at all times during the 24-month period beginning 12 months before the termination, fewer than two percent of the employees who were eligible under the defined contribution plan that includes the cash or deferred arrangement as of the date of plan termination are eligible under the other defined contribution plan, the other plan is not a successor plan. The term "defined contribution plan" means a plan that is a defined contribution plan as defined in section 414(i), but does not include an employee stock ownership plan as defined in section 4975(e) or 409(a) or a simplified employee pension as defined in section 408(k). A plan is a successor plan only if it exists at any time during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan.

(4) * * * (i) *Seller must maintain the plan.* A distribution may be made under section 401(k)(10) and paragraph (d)(1)(iv) or (v) of this section only from a plan that the seller continues to maintain after the disposition. This requirement is satisfied if and only if the purchaser does not maintain the plan after the disposition. A purchaser maintains the plan of the seller if it adopts the plan or otherwise becomes an employer whose employees accrue benefits under the plan. A purchaser also maintains the plan if the plan is merged or consolidated with, or any assets or liabilities are transferred from the plan to a plan maintained by the purchaser in a transaction subject to section 414(*l*)(1). A purchaser is not treated as maintaining the plan merely because a plan that it maintains accepts elective transfers described in § 1.411(d)–4, Q&A–3(b)(1), or rollover contributions of amounts distributed by the plan (including distributions that the recipient elects, under section

401(a)(31), to have paid in a direct rollover to the plan of the purchaser).

* * * * *

(5) * * * The term *lump sum distribution* has the meaning provided in section 402(d)(4), without regard to subparagraphs (A) (i) through (iv), (B), and (F) of that section.

(6) * * *

(iv) * * * The limitations of paragraph (d) of this section also do not apply to amounts distributed from another plan that the recipient elects under section 401(a)(31) to have paid in a direct rollover to the plan.

* * * * *

(e) * * *

(6) * * *

(ii) * * * Benefits under any other plan or arrangement (whether or not qualified) are not contingent upon an employee's electing to make or not to make elective contributions under a cash or deferred arrangement merely because the elective contributions are or are not taken into account as compensation under the other plan or arrangement for purposes of determining benefits.

* * * * *

(vi) *Examples.* The provisions of this paragraph (e)(6) are illustrated by the following examples.

Example 1. Employer T maintains a cash or deferred arrangement for all of its employees. Employer T also maintains a nonqualified deferred compensation plan for two highly paid executives, Employees R and C. Under the terms of the nonqualified deferred compensation plan, R and C are eligible to participate only if they do not make elective contributions under the cash or deferred arrangement. Participation in the nonqualified plan is a contingent benefit for purposes of this paragraph (e)(6), because R's and C's participation is conditioned on their electing not to make elective contributions under the cash or deferred arrangement.

Example 2. Employer T maintains a cash or deferred arrangement for all its employees. Employer T also maintains a nonqualified deferred compensation plan for two highly paid executives, Employees R and C. Under the terms of the arrangements, Employees R and C may defer a maximum of 10 percent of their compensation, and may allocate their deferral between the cash or deferred arrangement and the nonqualified deferred compensation plan in any way they choose (subject to the overall 10 percent maximum). Because the maximum deferral available under the nonqualified deferred compensation plan depends on the elective deferrals made under the cash or deferred arrangement, the right to participate in the nonqualified plan is a contingent benefit for purposes of paragraph (e)(6).

(7) *Coordination with other plans.* For plan years beginning after December 31, 1988, or such later date provided in paragraph (h) of this section, a cash or deferred arrangement satisfies this paragraph (e) only if no elective contributions (or qualified matching contributions treated as elective contributions under paragraph (b)(5) of this section) under the arrangement are taken into account for purposes of determining whether any other contributions under any plan (including the plan to which the elective contributions are made) satisfy the requirements of section 401(a). Indeed, the portion of a plan that consists of elective contributions is treated as a separate plan for purposes of sections 401(a)(4) and 410(b). See § 1.410(b)–7(c)(1). Similarly, elective contributions under a cash or deferred arrangement generally may not be taken into account in determining whether a plan satisfies the minimum contribution or benefit requirements of section 416. See § 1.416–1, M–20. However, qualified nonelective contributions that are treated as elective contributions for purposes of section 401(k)(3) under paragraph (b)(5) of this section may be used to enable a plan to satisfy the minimum contribution or benefit requirements under section 416. See § 1.416–1, M–18. This paragraph (e) does not apply for purposes of determining whether a plan satisfies the average benefit percentage requirement of section 410(b)(2)(A)(ii). See also § 1.401(m)–1(b)(5) for circumstances under which elective contributions may be used to determine whether a plan satisfies the requirements of section 401(m).

* * * * *

(f) * * *

(1) * * *

* * * * *

(iii) *Impermissible correction methods.* Excess contributions for a plan year may not remain unallocated or be allocated to a suspense account for allocation to one or more employees in any future year. In addition, excess contributions may not be corrected using the retroactive correction rules of § 1.401(a)(4)–11(g). See § 1.401(a)(4)–11(g) (3)(vii) and (5). See paragraph (f)(6) of this section for the effects of a failure to correct excess contributions.

(2) *Amount of excess contributions.* The amount of excess contributions for a highly compensated employee for a plan year is the amount (if any) by which the employee's elective contributions must be reduced for the employee's actual deferral ratio to equal the highest permitted actual deferral ratio under the plan. To calculate the highest permitted actual deferral ratio under a plan, the actual deferral ratio of the highly compensated employee with the highest actual deferral ratio is reduced by the amount required to cause the employee's actual deferral ratio to equal the ratio of the highly compensated employee with the next highest actual deferral ratio. If a lesser reduction would enable the arrangement to satisfy the actual deferral percentage test, only this lesser reduction may be made. This process must be repeated until the cash or deferred arrangement satisfies the actual deferral percentage test. The highest actual deferral ratio remaining under the plan after leveling is the highest permitted actual deferral ratio. Thus, for each highly compensated employee, the amount of excess contributions for a plan year is equal to the employee's elective contributions, plus qualified nonelective contributions and qualified matching contributions taken into account in determining the employee's actual deferral ratio under paragraph (g)(1) of this section, minus the amount determined by multiplying the employee's actual deferral ratio (determined after application of this paragraph (f)(2)) by the compensation used in determining the ratio. In no case may the amount of excess contributions to be recharacterized or distributed for a plan year with respect to any highly compensated employee exceed the amount of elective contributions made on behalf of the highly compensated employee for the plan year.

(3) * * *

(ii) *Treatment of recharacterized excess contributions.*

(A) Excess contributions recharacterized under this paragraph (f)(3) are includable in the employee's gross income on the earliest dates any elective contribution made on behalf of the employee during the plan year would have been received by the employee had the employee originally elected to receive the amounts in cash, or on such later date permitted in paragraph (f)(3)(iv) of this section. The recharacterized excess contributions must be treated as employee contributions for purposes of section 72, section 401(a)(4) and 401(m), and paragraphs (b) and (d) of this section. This requirement is not treated as satisfied unless:

(*1*) The payor or plan administrator reports the recharacterized excess contributions as employee contributions to the Internal Revenue Service and the employee by—

(*i*) Timely providing such forms as the Commissioner may designate to the employer and to employees whose excess contributions are recharacterized under this paragraph (f)(3); and

(*ii*) Timely taking such other action as the Commissioner may require; and

(*2*) The plan administrator accounts for the amounts as contributions by the employee for purposes of sections 72 and 6047.

(B) Recharacterized excess contributions continue to be treated as employer contributions that are elective contributions for all other purposes under the Internal Revenue Code, including sections 401(a) (other than 401(a)(4) and 401(m)), 404, 409, 411, 412, 415, 416, and 417. Thus, for example, recharacterized excess contributions remain subject to the requirements of paragraph (c) of this section; must be deducted under section 404; and are treated as employer contributions described in section 415(c)(2)(A) and § 1.415–6(b). In addition, these amounts are not treated as compensation for purposes of sections 404 and 415, and may be treated as compensation for purposes of sections 401(a)(4), 401(a)(5), 401(k), 401(l) and 414(s) only to the extent that elective contributions may be treated, and are treated under the plan, as compensation. See § 1.414(s)–1(c)(4)(i). Recharacterized excess contributions that relate to plan years ending on or before October 24, 1988, may be treated as either employer contributions or employee contributions for purposes of paragraph (d) of this section. The amount of excess contributions included in an employee's gross income is reduced as provided under paragraph (f)(5)(i)(B) of this section.

(iii) * * *

(C) *Plans under which excess contributions may be recharacterized.* For plan years beginning after December 31, 1991, elective contributions may be recharacterized under this paragraph (f)(3) only under the plan under which they are made or under a plan with which that plan could be aggregated under § 1.410(b)–7(d) after application of the mandatory disaggregation rules of § 410(b)–7(c), as modified in § 1.401(k)–1(g)(11). For plan years beginning before that date and after December 31, 1988, or such later date provided under paragraph (h) of this section, elective contributions may be recharacterized under this paragraph (f)(3) only under the plan under which they are made or under a plan with the same plan year as that plan.

* * * * *

(v) * * *

Example. (i) Employer X maintains Plan Y, a calendar year profit-sharing plan that includes a qualified cash or deferred arrangement. Under Plan Y, each eligible employee may elect to defer up to 10 percent of compensation under a salary reduction agreement. An eligible employee may also make employee contributions of up to 10 percent of compensation. X pays the amounts deferred to the trust on the last day of each month. Employer X includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). Salaries are paid on the same date.

* * * * *

(4) * * *

(ii) * * *

(B) *Method of allocating income.* A plan may use any reasonable method for computing the income allocable to excess contributions, provided that the method does not violate section 401(a)(4), is used consistently for all participants and for all corrective distributions under the plan for the plan year, and is used by the plan for allocating income to participants' accounts. See § 1.401(a)(4)–1(c)(8).

* * * * *

(7) * * *

Example 1 (i) The Y corporation maintains a cash or deferred arrangement. The plan year is the calendar year For plan year 1989, all 10 of Y's employees are eligible to participate in the cash or deferred arrangement. The Y corporation includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). The employees' compensation, elective contributions, and actual deferral ratios are shown in the following table:

Employee	Compensation	Elective contributions	Actual deferral ratio (ADR) (percent
A	$160,000	$6,400	4.0
B	140,000	7,000	5.0
C	70,000	7,000	10.0
D	65,000	6,500	10.0
E	42,000	2,100	5.0
F	35,000	3,500	10.0
G	28,000	2,800	10.0
H	21,000	700	3.33
I	21,000	0	0
J	21,000	0	0

* * * * *

Example 2. A, B, and C are highly compensated employees of Employer R. Employer R maintains a cash or deferred arrangement. Employer R includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). For the plan year 1990, A, B, and C each earns compensation of $100,000 and contributes $7,000 to the plan during the period January through June. B retires in November of 1990 and makes a withdrawal of B's entire account balance of $200,000. In January of 1991, R computes the ADP test for its employees and learns that the highly compensated employees should have contributed only five percent of compensation. Since B made a contribution of $7,000 for 1990, B's contribution and compensation are used in determining the ADP despite the subsequent $200,000 withdrawal. A, B, and C must each receive a corrective distribution of $2,000 in order to meet the ADP test. Since B has already withdrawn B's total account balance under the plan, only A and C must receive a distribution of $2,000 each in order for the plan to meet the ADP test of section 401(k)(3)(A)(ii). Pursuant to the 1990 Form 1099–R Instructions, the plan must issue two Forms 1099–R to B, one reporting the portion of the distribution that was necessary to correct the excess contribution (including income), and one reporting the balance of the distribution. If B had withdrawn less than the total account balance, B would have to withdraw the lesser of $2,000 or the remaining account balance.

Example 3. Individual A has a child, B. Both participate in a cash or deferred arrangement maintained by Employer X. A is one of the 10 most highly compensated employees and B is a nonhighly compensated employee. Employer X includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). A has compensation of $100,000 and defers $7,000 under the cash or deferred arrangement; B has compensation of $40,000 and defers $4,000 under the arrangement. The actual deferral ratio of the family unit is 7.86 percent, calculated by aggregating the contributions and compensation of A and B ($7,000 + $4,000)/($100,000 + $40,000). For the plan, it is determined that under § 1.401(k)–1(f)(2), the actual deferral ratio of the aggregate family unit must be reduced to

7.20 percent. This reduction is applied in proportion to A's and B's contributions. The excess contributions are $920 ($11,000 total contributions minus $10,080 (7.20% x $140,000)). A's share of the excess contributions is $585.45 ($7,000/$11,000 x $920); B's share is $334.55 ($4,000/$11,000 x $920).

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(B) * * * (*1*) *Highly compensated employees.* For plan years beginning after December 31, 1984, the actual deferral ratio of a highly compensated employee who is eligible to participate in more than one cash or deferred arrangement of the same employer is generally calculated by treating all the cash or deferred arrangements in which the employee is eligible to participate as one arrangement. However, plans that are not permitted to be aggregated under § 1.410(b)–7(c), as modified in paragraph (g)(11) of this section, are not aggregated for this purpose. For example, if a highly compensated employee with compensation of $80,000 could make elective contributions under two separate cash or deferred arrangements, the actual deferral ratio for the employee under each arrangement would generally be calculated by dividing the total elective contributions by the employee under both arrangements by $80,000. If one of the cash or deferred arrangements were part of an ESOP, however, while the other was not, the actual deferral percentage of the employee under each arrangement would be calculated by dividing the employee's elective contributions under each arrangement by $80,000 because the ESOP portion is mandatorily disaggregated from the non-ESOP portion.

* * * * *

(C) * * * (*1*) *Aggregation of elective contributions and other amounts.* For plan years beginning after December 31, 1986, or any later date provided in paragraph (h) of this section, if a highly compensated employee is subject to the family aggregation rules of section 414(q)(6) because that employee is either a five-percent owner or one of the 10 most highly compensated employees, the combined actual deferral ratio for the family group (which is treated as one highly compensated employee) must be determined by combining the elective contributions, compensation, and amounts treated as elective contributions of all family members.

* * * * *

(2) * * * (i) *Years beginning after December 31, 1986.* For plan years beginning after December 31, 1986, or such later date provided in paragraph (h) of this section, the term *compensation* means compensation as defined in section 414(s) and § 1.414(s)–1. The period used to determine an employee's compensation for a plan year must be either the plan year or the calendar year ending within the plan year. Whichever period is selected must be applied uniformly to determine the compensation of every eligible employee under the plan for that plan year for purposes of this section. An employer may, however, limit the period taken into account under either method to that portion of the plan year or calendar year in which the employee was an eligible employee, provided that this limit is applied uniformly to all eligible employees under the plan for the plan year for purposes of this section. See also section 401(a)(17) and § 1.401(a)(17)–1(c)(1).

* * * * *

(4) * * *

(ii) * * * In no event is an election made after December 23, 1994 treated as a one-time irrevocable election under this paragraph if the election is made by an employee who previously became eligible under another plan (whether or not terminated) of the employer.

(5) *Employee.* The term *employee* means an employee within the meaning of § 1.410(b)–9.

(6) *Employer.* The term *employer* means the employer within the meaning of § 1.410(b)–9.

* * * * *

(11) *Plan*—(i) *Application of section 410(b) rules.* The term *plan* means a plan within the meaning of § 1.410(b)–7 (a) and (b), after application of the mandatory disaggregation rules of § 1.410(b)–7(c) and the permissive aggregation rules of § 1.410(b)–7(d), with the modifications provided in paragraph (g)(11)(ii) of this section. Thus, for example, two plans (within the meaning of § 1.410(b)–7(b)) that are treated as a single plan pursuant to the permissive aggregation rules of § 1.410(b)–7(d) are treated as a single plan for purposes of section 401(k). See also § 1.401(k)–1(b)(3)(ii).

(ii) *Modifications to section 410(b) rules*—(A) *In general.* For purposes of this paragraph (g)(11), § 1.410(b)–7 (c) and (d) are applied without regard to § 1.410(b)–7(c)(1), relating to section 401(k) and 401(m) plans.

(B) *Plans benefiting collective bargaining unit employees.* A plan that benefits employees who are included in a unit of employees covered by a collective bargaining agreement and employees who are not included in such a collective bargaining unit is treated as comprising separate plans. This paragraph (g)(11)(ii)(B) is generally applied separately with respect to each collective bargaining unit. At the option of the employer, however, two or more separate collective bargaining units can be treated as a single collective bargaining unit, provided that the combinations of units are determined on a basis that is reasonable and reasonably consistent from year to year. Thus, for example, if a plan benefits employees in three categories—employees included in collective bargaining unit A, employees included in collective bargaining unit B, and employees who are not included in any collective bargaining unit—the plan can be treated as comprising three separate plans, each of which benefits only one category of employees. However, if collective bargaining units A and B are treated as a single collective bargaining unit, the plan will be treated as comprising only two separate plans, one benefiting all employees who are included in a collective bargaining unit and another benefiting all other employees. Similarly, if a plan benefits only employees who are included in collective bargaining unit A and employees who are included in collective bargaining unit B, the plan can be treated as comprising two separate plans. However, if collective bargaining units A and B are treated as a single collective bargaining unit, the plan will be treated as a single plan. An employee is treated as included in a unit of employees covered by a collective bargaining agreement if and only if the employee is a collectively bargained employee within the meaning of § 1.410(b)–6(d)(2).

(C) *Multiemployer plans.* Consistent with section 413(b), the portion of the plan that is maintained pursuant to a collective bargaining agreement (within the meaning of § 1.413–1(a)(2)) is treated as a single plan maintained by a single employer that employs all the employees benefiting under the same benefit computation formula and covered pursuant to that collective bargaining agreement. The rules of paragraph (g)(11)(ii)(B) of this section (including the optional aggregation of collective bargaining units) apply to the resulting deemed single plan in the same manner as they would to a single employer plan, except that the plan administrator is substituted for the employer where appropriate and appropriate fiduciary obligations are taken into account. The noncollectively bargained portion of the plan is treated as maintained by one or more employers, depending on whether the

noncollective bargaining unit employees who benefit under the plan are employed by one or more employers.

* * * * *

(15) *Section 401(k) plan.* The term *section 401(k) plan* means a section 401(k) plan within the meaning of § 1.410(b)–9.

(16) *Section 401(m) plan.* The term *section 401(m) plan* means a section 401(m) plan within the meaning of § 1.410(b)–9.

(h) * * *

(3) * * *

(iii) * * * (A) *General rule.* In determining whether the requirements of section 401(k) are satisfied for plan years beginning before January 1, 1992, a plan may be treated as consisting of two or more component plans, each consisting of all of the allocations and other benefits, rights, and features provided to a group of employees under the plan. See § 1.401(a)(4)–9(c). An employee may not be included in more than one component plan of the same plan for a plan year under this method. If this method is used for a plan year, the requirements of section 401(k) are applied separately with respect to each component plan for the plan year. Thus, for example, the actual deferral ratio and the amount of excess contributions, if any, of each eligible employee under each component plan must be determined as if the component plan were a separate plan. This method applies solely for purposes of section 401(k). Thus, for example, the requirements of section 410(b) must still be satisfied by the entire plan.

(B) * * *

(*2*) *Commonality requirement.* The group of employees used to identify a component plan must share some common attribute or attributes, other than similar actual deferral ratios. Permissible common attributes include, for example, employment at the same work site, in the same job category, for the same division or subsidiary, or for a unit acquired in a specific merger or acquisition, employment for the same number of years, compensation under the same method, *e.g.*, salaried or hourly, coverage under the same contribution formula, and attributes that could be used as the basis of a classification that would be treated as reasonable under § 1.410(b)–4(b). Employees whose only common attribute is the same or similar actual deferral ratios, or another attribute having substantially the same effect as the same or similar actual deferral ratios, are not considered as sharing a common attribute for this purpose. This rule applies regardless of whether the component plan or the plan of which it is a part satisfies the ratio or percentage test of section 410(b).

(4) * * *

(ii) *Plan years beginning before January 1, 1996.* The following rules apply to a governmental plan described in section 414(d) that is not a collectively bargained plan and includes a nonqualified cash or deferred arrangement. These rules apply for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (b)(1), the term *governing body with authority to amend the plan* means the legislature, board, commission, council, or other governing body with authority to amend the plan.

* * * * *

Par. 4. Section 1.401(m)–0 is amended as follows:

1. The entry for § 1.401(m)–1, paragraph (b)(3)(ii) is removed.

2. The entry for § 1.401(m)–1, paragraph (b)(3)(iii) is revised and redesignated (b)(3)(ii).

3. The entry for § 1.401(m)–1, paragraph (b)(4)(ii)(B) is revised.

4. An entry for § 1.401(m)–1, paragraph (e)(3)(vii) is added.

5. Entries for § 1.401(m)–1, paragraph (f)(16) and (17) are added.

The added and revised entries read as follows:

§ 1.401(m)–0 Employee and matching contributions, table of contents.

* * * * *

§ 1.401(m)–1 * * *

* * * * *

(b) * * *

(3) * * *

(ii) Restructuring and Permissive Disaggregation.

(4) * * *

(ii) * * *

(B) Matching contributions and qualified nonelective contributions used to satisfy actual deferral percentage test.

* * * * *

(e) * * *

(3) * * *

(vii) No corrective distribution of matching contributions other than excess aggregate contributions.

* * * * *

(f) * * *

(16) Section 401(k) plan.

(17) Section 401(m) plan.

* * * * *

Par. 5. Section 1.401(m)–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b) is amended as follows:

i. Paragraph (b)(1) is revised.

ii. Paragraphs (b)(3)(i) and (b)(3)(ii) are revised.

iii. Paragraph (b)(3)(iii) is removed.

iv. A sentence is added at the end of paragraph (b)(4)(ii)(A).

v. Paragraph (b)(4)(ii)(B) is revised.

vi. Paragraph (b)(5) (i) and (ii) are amended by adding a sentence at the end.

vii. Paragraph (b)(5)(v) is revised.

3. Paragraph (c)(1) is revised.

4. Paragraph (d) is amended as follows:

i. Paragraph (i) of *Example 3* is revised.

ii. Paragraph (i) of *Example 4* is revised.

5. Paragraph (e) is amended as follows:

i. Paragraph (e)(1)(iii) is revised.

ii. A sentence is added at the end of paragraph (e)(3)(ii)(B).

iii. Paragraph (e)(3)(vii) is added.

iv. Paragraph (e)(4) is revised.

v. Paragraph (e)(6) is amended as follows:

a. *Examples 2* through *6* are revised.

b. *Example 8* is added.

6. Paragraph (f) is amended as follows:

i. Paragraphs (f)(1)(ii) (B) and (C)(*1*), and (f)(2) are revised.

ii. A sentence is added at the end of paragraph (f)(4)(ii).

iii. Paragraph (f)(12)(i)(B) is revised.

iv. Paragraphs (f) (16) and (17) are added.

7. Paragraph (g)(4), (g)(5)(ii) (A) and (B)(*2*) are revised.

The added and revised provisions read as follows:

§ 1.401(m)–1 Employee and matching contributions.

(a) General Rules—(1) *Nondiscriminatory amount of contributions.* A defined contribution plan does not satisfy section 401(a)(4) for a plan year unless the amount of employee and matching contributions to the plan for the plan year satisfies section 401(a)(4). See § 1.401(a)(4)–1(b)(2)(ii). Except as specifically provided otherwise, for plan years beginning after December 31, 1986 (or such later date provided in paragraph (g) of this section) the amount of employee and matching contributions under a plan satisfies the requirements of section 401(a)(4) only if the employee and matching contributions under the plan satisfy the actual contribution percentage test of section 401(m)(2) and paragraph (b) of this section. See § 1.401(a)(4)–1(b)(2)(ii)(B). Also, except as specifically provided otherwise, for plan years beginning after December 31, 1988 (or such later date provided in

§ 1.401(m)–2(d)), the amount of employee and matching contributions under a plan satisfies the requirements of sections 401(m) and 401(a)(4) only if any multiple use of the alternative methods of compliance with sections 401 (k) and (m) (contained in sections 401(k)(3)(A)(ii)(II) and 401(m)(2)(A)(ii), respectively) is corrected under § 1.401(m)– 2(c). See section 401(m)(9) and § 1.401(m)–2. For these purposes, the employee and matching contributions are combined with the elective and qualified nonelective contributions, if any, that are treated as matching contributions, and the recharacterized elective contributions, if any, that are treated as employee contributions for purposes of section 401(m).

(2) *Other nondiscrimination rules.* Nondiscrimination requirements in addition to those described in paragraph (a)(1) of this section apply to employee and matching contributions under sections 401(a)(4) and 410(b). For example, under section 401(a)(4) a plan may not discriminate with respect to the availability of benefits, rights, and features under the plan. See § 1.401(a)(4)–1(b)(3). The right to make each level of employee contributions, and the right to each level of matching contributions, are benefits, rights, or features subject to this requirement, and each level must therefore generally be available to a group of employees that satisfies section 410(b). See § 1.401(a)(4)–4(e)(3) (i) and (iii) (F) through (G). Thus, for example, a plan does not satisfy section 401(a)(4) if it provides a higher rate of matching contributions for highly compensated employees than for nonhighly compensated employees. See paragraph (e)(4) of this section for rules relating to the application of section 401(a)(4) to the correction of excess aggregate contributions. See § 1.401(a)(4)–11(g)(3)(vii) for special rules relating to correction of violations of the minimum coverage requirements or discriminatory rates of match in a section 401(m) plan. For special rules governing the application of section 410(b) to employee and matching contributions, see §§ 1.410(b)–7(c)(1) and 1.410(b)–8(a)(1).

(3) *Rules applicable to collectively bargained plans.* The requirements of this section are treated as satisfied by employee and matching contributions under a collectively bargained plan (or the portion of a plan) that automatically satisfies section 410(b). See §§ 1.401(a)(4)–1(c)(5) and 1.410(b)–2(b)(7). There are no excess aggregate contributions under a plan (or a portion of a plan) that is treated under this paragraph (a)(3) as satisfying the requirements of this section. Thus, the provisions of section 4979 and § 54.4979–1 of this chapter do not apply to contributions described in the first sentence of this paragraph (a)(3).

(b) *Actual contribution percentage test*—(1) *General rule.* (i) For plan years beginning after December 31, 1986, or such later date provided in paragraph (g) of this section, the actual contribution percentage test is satisfied if—

(A) The actual contribution percentage for the group of eligible highly compensated employees is not more than the actual contribution percentage for the group of all other eligible employees multiplied by 1.25; or

(B) The excess of the actual contribution percentage for the group of eligible highly compensated employees over the actual contribution percentage for the group of all other eligible employees is not more than two percentage points, and the actual contribution percentage for the group of eligible highly compensated employees is not more than the actual contribution percentage for the group of all other eligible employees multiplied by two.

(ii) A plan does not fail to satisfy the requirements of this paragraph (b)(1) merely because all of the eligible employees under the plan for a year are highly compensated employees.

* * * * *

(3) * * * (i) *General rule.* See § 1.401(m)–1(f)(14) for the definition of a plan used for purposes of this section and § 1.401(m)–2. That definition contains the exclusive rules for aggregation and disaggregation of plans for purposes of this section and § 1.401(m)–2.

(ii) *Restructuring and Permissive Disaggregation.* Effective for plan years beginning after December 31, 1991, restructuring under § 1.401(a)(4)–9(c) may not be used to demonstrate compliance with the requirements of section 401(m). See § 1.401(a)(4)–9(c)(3)(ii). For plan years beginning before January 1, 1992, see § 1.401(m)–1(g)(5)(ii). An employer may, however, treat a plan benefiting otherwise excludable employees as two separate plans for purposes of sections 401(m) and 410(b) in accordance with §§ 1.410(b)–6(b)(3) and 1.410(b)–7(c)(3).

(4) * * *

(ii) * * * (A) * * * See §§ 1.401(a)(4)–1(b)(2)(ii)(B); 1.410(b)–7(c)(1).

(B) *Matching contributions and qualified nonelective contributions used to satisfy actual deferral percentage test.* A matching contribution that is treated as an elective contribution is subject to the actual deferral percentage test of section 401(k)(3) and is not taken into account under paragraph (b)(1) of this section. See § 1.401(k)–1(b)(5)(iii) for the rule relating to years before January 1, 1987. A qualified nonelective contribution that is treated as an elective contribution is subject to the actual deferral percentage test of section 401(k)(3) and is not taken into account as a matching contribution under paragraph (b)(1) or (5) of this section.

* * * * *

(5) * * *

(i) * * * See § 1.401(a)(4)–1(b)(2).

(ii) * * * See § 1.401(a)(4)–1(b)(2).

* * * * *

(v) For plan years beginning after December 31, 1988, or such later date provided in paragraph (g) of this section, the plan that takes qualified nonelective contributions and elective contributions into account in determining whether employee and matching contributions satisfy the requirements of section 401(m)(2)(A), and the plans to which the qualified nonelective contributions and elective contributions are made, could be aggregated under § 1.410(b)–7(d) after application of the mandatory disaggregation rules of § 1.410(b)–7(c), as modified in § 1.401(k)–1(g)(11). If the plan year of the section 401(m) plan is changed to satisfy the requirement under § 1.410(b)–7(d)(5) that the aggregated plans have the same plan year, the elective contributions may be taken into account in the resulting short plan year only if these contributions satisfy the requirements of § 1.401(k)–1(b)(4) with respect to the short year, and the qualified nonelective contributions may be taken into account in the resulting short plan year only if these contributions satisfy the requirements of § 1.401(k)–1(b)(4)(i)(A) with respect to the short year as if they were elective contributions.

(c) * * * (1) *Coordination with other plans.* Except as expressly permitted under section 401(k) or 401(m), for plan years beginning after December 31, 1988, or such later date provided in paragraph (g) of this section, employee or matching contributions (or elective contributions treated as matching contributions under paragraph (b)(5) of this section) may not be taken into account for purposes of determining whether any other contributions under any plan (including the plan to which the employee or matching contributions are made) satisfy the requirements of section 401(a). Indeed, the portion of a plan that consists of employee and matching contributions is treated as a

separate plan for purposes of sections 401(a)(4) and 410(b). See § 1.410(b)–7(c)(1). Similarly, although matching contributions and qualified nonelective contributions may be used to enable a plan to satisfy the minimum contribution or benefit requirements under section 416, matching contributions that are used in this way are not treated as matching contributions, and must therefore satisfy the nondiscrimination requirements of section 401(a)(4) without regard to section 401(k) or 401(m). See § 1.416–1, M–18 & M–19 and paragraph (f)(12)(iii) of this section. See also § 1.401(k)–1(b)(5) for circumstances under which matching contributions may be used to determine whether a plan satisfies the requirements of section 401(k). This paragraph does not apply for purposes of determining whether a plan satisfies the average benefit percentage test of section 410(b)(2)(A)(ii).

* * * * *

(d) * * *

Example 3. (i) Employer N maintains a plan that contains a cash or deferred arrangement and permits employee contributions. Employer N includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). For the 1988 plan year, the average percentages of compensation contributed to the plan by the highly compensated and nonhighly compensated employees as elective contributions and employee contributions are shown in the chart below. Elective contributions meet the requirements of paragraph (b)(5) of this section.

	Elective Contributions (percent)	Employee Contributions (percent)
Highly compensated	10	10
Nonhighly compensated	10	6

* * * * *

Example 4. (i) Employer P maintains a plan that includes a cash or deferred arrangement. Elective contributions, qualified nonelective contributions (QNCs), employee contributions, and matching contributions are made to the plan. Employer P includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). The elective contributions and QNCs meet the requirements of paragraph (b)(5) of this section. For the 1989 plan year, the QNCs, elective contributions, and employee and matching contributions, expressed as a percentage of compensation, are shown in the following table:

	QNCs (percent)	Elective Contributions (percent)	Employee/Matching Contributions (percent)
Highly compensated	3	5	6
Nonhighly compensated	3	4	2

* * * * *

(e) * * *

(1) * * *

(iii) *Impermissible correction methods.* Excess aggregate contributions may not be corrected by forfeiting vested matching contributions, recharacterizing matching contributions, or not making matching contributions required under the terms of the plan. Excess aggregate contributions for a plan year may not remain unallocated or be allocated to a suspense account for allocation to one or more employees in any future year. In addition, excess aggregate contributions may not be corrected using the retroactive correction rules of § 1.401(a)(4)–11(g). See § 1.401(a)(4)–11(g)(3)(vii) and (5). See paragraph (e)(5) of this section for the effects of a failure to correct excess aggregate contributions. See § 1.411(a)–4(b)(7) regarding permissible forfeitures of matching contributions.

* * * * *

(3) * * *

(ii) * * *

(B) * * * See § 1.401(a)(4)–1(c)(8).

* * * * *

(vii) *No corrective distribution of matching contributions other than excess aggregate contributions.* A matching contribution that is an excess aggregate contribution may be distributed as provided in section 401(m)(6) and § 1.401(m)–1(e)(3). A matching contribution may not be distributed merely because the contribution to which it relates is treated as an excess contribution, excess deferral, or excess aggregate contribution. See §§ 1.401(k)–1(f)(5)(iii) and 1.411(a)–4(b)(7) regarding permissible forfeitures of matching contributions that relate to excess contributions, excess deferrals, or excess aggregate contributions.

(4) *Coordination with section 401(a)(4).* A matching contribution is taken into account under section 401(a)(4) even if it is distributed, unless the distributed contribution is an excess aggregate contribution. However, the method of distributing excess aggregate contributions provided in the plan must satisfy the requirements of section 401(a)(4). This requires that after correction each level of matching contributions be currently and effectively available to a group of employees that satisfies section 410(b). See § 1.401(a)(4)–4(e)(3)(iii)(G). Thus, a plan that provides the same rate of matching contributions to all employees will not meet the requirements of section 401(a)(4) if employee contributions are distributed under this paragraph (e) to highly compensated employees to the extent needed to meet the requirements of section 401(m)(2), while matching contributions attributable to employee contributions remain allocated to the highly compensated employees' accounts. See § 1.411(a)–4(b)(7) for a rule that allows forfeiture of these matching contributions to avoid a violation of section 401(a)(4). See also § 1.401(a)(4)–11(g)(3)(vii)(B) regarding the use of additional allocations to the accounts of nonhighly compensated employees for the purpose of correcting a discriminatory rate of matching contributions. A method of distributing excess aggregate contributions will not be considered discriminatory solely because, in accordance with the terms of the plan, unmatched employee contributions that exceed the highest rate at which employee contributions are matched are distributed before matched employee contributions, or matching contributions are distributed (or forfeited) prior to employee contributions. See *Example 6* in paragraph (e)(6) of this section.

* * * * *

(6) * * *

* * * * *

Example 2. (i) Employee A is the sole highly compensated participant in a cash or deferred arrangement maintained by

Employer X. The plan that includes the arrangement, Plan X, provides a fully vested matching contribution equal to 50 percent of elective contributions. Plan X is a calendar year plan. Employer X includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). Plan X corrects excess contributions by recharacterization. For the 1988 plan year, A's compensation is $58,333, and A's elective contributions are $7,000. The actual deferral percentages and actual contribution percentages of A and other employees under Plan X are shown below:

	Actual deferral percentage	Actual contribution percentage
Employee A	12	6
Nonhighly compensated	8	4

(ii) In February 1989, Employer X determines that A's actual deferral ratio must be reduced to 10 percent, or $5,833, which requires a recharacterization of $1,167 as an employee contribution. This increases A's actual contribution ratio to eight percent ($3,500 in matching contributions plus $1,167 recharacterized as employee contributions, divided by $58,333 in compensation). Since A's actual contribution ratio must be limited to six percent for Plan X to satisfy the actual contribution percentage test, Plan X must distribute $1,167 of A's employee and matching contributions. If $1,167 in matching contributions is distributed, this will correct the excess aggregate contributions and will not result in a discriminatory rate of matching contributions. See *Example 8*.

Example 3. Same as *Example 2*, except that in 1988 A also had elective contributions of $1,313 under Plan Y, maintained by an employer unrelated to X. In January 1989, A requests and receives a distribution of $1,000 in excess deferrals from Plan X. Pursuant to the terms of Plan X, A forfeits the $500 match on the excess deferrals to correct a discriminatory rate of match (see *Example 8*). The $1,167 that would otherwise have been recharacterized for Plan X to satisfy the actual deferral percentage test is reduced by the $1,000 already distributed as an excess deferral, leaving $167 to be recharacterized. See § 1.401(k)–1(f)(5)(i). Pursuant to the terms of Plan X, A forfeits the $83.50 match on the recharacterized $167 to correct a discriminatory rate of match. A's actual contribution ratio is now 5.29 percent ($2,916.50 ($3,500–$500–$83.50)) in matching contributions plus $167 in employee contributions, divided by $58,333 in compensation). Since Plan X satisfies the actual contribution percentage test, no further distribution is required or permitted.

Example 4. Same as *Example 3*, except that A does not request a distribution of excess deferrals until March 1989. Employer X has already recharacterized $1,167 as employee contributions. Under § 1.402(g)–1(e)(6), the amount of excess deferrals is reduced by the amount of excess contributions that are recharacterized. Because the amount recharacterized is greater than the excess deferrals, Plan X is neither required nor permitted to make a distribution of excess deferrals, and the recharacterization has corrected the excess deferrals.

Example 5. For the 1987 plan year, Employee B defers $7,000 under Plan C and $1,000 under plan D. Plans C and D are maintained by unrelated Employers C and D; both Plans C and D have calendar plan years. Plan C provides a fully vested, 100 percent matching contribution and does not take elective contributions into account under section 401(m) or take matching contributions into account under section 401(k). Employer C determines that B has excess contributions of $600 and excess aggregate contributions of $1,600. B timely requests and receives a distribution of the $1,000 excess deferral from Plan C, and pursuant to the terms of Plan C, forfeits the corresponding $1,000 matching contribution to correct a discriminatory rate of match (see *Example 8*). Plan C provides that excess contributions and excess aggregate contributions are corrected by distribution. No distribution is required or permitted to correct the excess contributions because $1,000 has been distributed from this plan as excess deferrals. The distribution required to correct the excess aggregate contributions (after forfeiting the matching contribution) is $600 ($1,600 in excess aggregate contributions minus $1,000 in forfeited matching contributions). If B had corrected the excess deferrals of $1,000 by withdrawing $1,000 from Plan D, Plan C would have had to correct the $600 excess contributions in Plan C by distributing $600. Since B then would have forfeited $600 (instead of $1,000) in matching contributions, B would have had $1,000 ($1,600 in excess aggregate contributions minus $600 in forfeited matching contributions) remaining of excess aggregate contributions in Plan C. These would have been corrected by distributing an additional $1,000 from Plan C.

Example 6. Employee B is the sole highly compensated employee in a thrift plan under which the employer matches 100 percent of employee contributions up to two percent of compensation, and 50 percent of employee contributions up to the next four percent of compensation. For the 1988 plan year, B has compensation of $100,000. B makes an employee contribution of $7,000, or seven percent, and receives a four percent matching contribution of $4,000. Thus, B's actual contribution ratio (ACR) is 11 percent. The actual contribution percentage for the nonhighly compensated employees is five percent, and the employer determines that B's ACR must be reduced to seven percent to comply with the rules of section 401(m). In this case, the plan satisfies the requirements of this paragraph if it distributes the unmatched employee contributions of $1,000, and $2,000 of matched employee contributions with their related matches of $1,000. This would leave B with four percent employee contributions, and three percent matching contributions, for an ACR of seven percent. The plan could instead distribute all matching contributions. The plan would fail to meet the requirements of this paragraph if it distributed $4,000 (four percent) of B's employee contributions and none of B's matching contributions because this would result in a discriminatory rate of matching contributions. See § 1.401(m)–1(e)(2) and (4). See also *Example 8*.

* * * * *

Example 8. (i) Employer B maintains a calendar year profit sharing plan that includes a cash or deferred arrangement. Elective contributions are matched at the rate of 100 percent. After-tax employee contributions are permitted under the plan only for nonhighly compensated employees and are matched at the same rate. No employees make excess deferrals. Employee A, a highly compensated employee, makes an $8,000 elective contribution and receives an $8,000 matching contribution.

(ii) Employer B performs the actual deferral percentage (ADP), the actual contribution percentage (ACP), and the multiple use tests. To correct failures of the ADP and ACP tests, the plan distributes to A $1,000 of excess contributions and $500 of excess aggregate contributions. After the distributions, A's contributions for the year are $7,000 of elective contributions and $7,500 of matching contributions. As a result, A has received a higher effective rate of matching contributions than nonhighly compensated employees ($7,000 of elective contributions matched by $7,500 is an effective matching rate of 107 percent). If this amount remains in A's account without correction, it will cause the plan to fail to satisfy section 401(a)(4), because only a highly compensated employee receives the higher matching contribution rate. The remaining $500 matching contribution may be forfeited (but not distributed) under section 411(a)(3)(G), if the plan so provides. The plan could instead correct the discriminatory rate of matching contributions by making additional allocations to the accounts of nonhighly compensated employees. See § 1.401(a)(4)–11(g)(3)(vii)(B) and (6), *Example 7*.

(f) * * *

(1) * * *

(ii) * * *

(B) *Highly compensated employee eligible under more than one plan.* The actual contribution ratio of a highly compensated employee who is eligible to participate in more than one plan of an employer to which employee or matching contributions are made is calculated by treating all the plans in which the employee is eligible to participate as one plan. However, plans that are not permitted to be aggregated under § 1.410(b)–7(c), as modified in § 1.401(k)–1(g)(11), are not aggregated for this purpose. For example, if a highly compensated employee with compensation of $80,000 may receive matching contributions under two plans of an employer, the employee's actual contribution ratio under each plan is calculated by dividing the employee's total matching contributions under both plans by $80,000, unless the plans are required to be disaggregated. In that case, the actual contribution ratio of the employee under each plan is to be

calculated by dividing the employee's matching contributions under that plan by $80,000. See paragraph (b)(3) of this section for the treatment of certain multiple plans. For plan years beginning after December 31, 1988, or such later date provided in paragraph (g) of this section, if a highly compensated employee participates in two or more plans that have different plan years, this paragraph (f)(1)(ii) is applied by treating all plans whose plan years end with or within the same calendar year as a single plan.

(C) *Employees subject to family aggregation rules—(1)* Aggregation of employee contributions and other amounts. For plan years beginning after December 31, 1986, or such later date provided in paragraph (g) of this section, if a highly compensated employee is subject to the family aggregation rules of section 414(q)(6) because that employee is either a five-percent owner or one of the 10 most highly compensated employees, the combined actual contribution ratio for the family group (treated as one highly compensated employee) must be determined by combining the employee contributions, matching contributions, amounts treated as matching contributions, and compensation of all family members.

* * * * *

(2) *Compensation.* The term *compensation* means compensation as defined in § 1.401(k)–1(g)(2)(i).

* * * * *

(4) * * *

(ii) * * * In no event is an election made after December 23, 1994 treated as a one-time irrevocable election under this paragraph if the election is made by an employee who previously became eligible under another plan (whether or not terminated) of the employer.

* * * * *

(12) * * *

(i) * * *

(B) Any employer contribution (including a contribution made at the employer's discretion) to a defined contribution plan on account of an elective deferral (as defined in § 1.402(g)–1(b)); and

* * * * *

(16) *Section 401(k) plan.* The term *section 401(k) plan* means a section 401(k) plan within the meaning of § 1.410(b)–9.

(17) *Section 401(m) plan.* The term *section 401(m) plan* means a section 401(m) plan within the meaning of § 1.410(b)–9.

(g) * * *

(4) *State and local government plans.* A governmental plan described in section 414(d), including a plan subject to section 403(b)(12)(A)(i) (nonelective plan) is treated as satisfying section 401(m) for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (g)(4), the term *governing body with authority to amend the plan* means the legislature, board, commission, council, or other governing body with authority to amend the plan.

(5) * * *

(ii) * * * (A) *General rule.* In determining whether the requirements of section 401(m) are satisfied for plan years beginning before January 1, 1992, a plan may be treated as consisting of two or more component plans, each consisting of all of the allocations and other benefits, rights, and features provided to a group of employees under the plan. See § 1.401(a)(4)–9(c). An employee may not be included in more than one component plan of the same plan for a plan year under this method. If this method is used for a plan year, the requirements of section 401(m) are applied separately with respect to each component plan for the plan year. Thus, for example, the actual contribution ratio and the amount of excess aggregate contributions, if any, of each eligible employee under each component plan must be determined as if the component plan were a separate plan. This method applies solely for purposes of section 401(m). Thus, for example, the requirements of section 410(b) must still be satisfied by the entire plan.

(B) * * *

(2) *Commonality requirement.* The group of employees used to identify a component plan must share some common attribute or attributes, other than similar actual contribution ratios. Permissible common attributes include, for example, employment at the same work site, in the same job category, for the same division or subsidiary, or for a unit acquired in a specific merger or acquisition, employment for the same number of years, compensation under the same method (e.g., salaried or hourly), coverage under the same contribution formula, and attributes that could be used as the basis of a classification that would be treated as reasonable under § 1.410(b)–4(b). Employees whose only common attribute is the same or similar actual contribution ratios, or another attribute having substantially the same effect as the same or similar actual contribution ratios, are not considered as sharing a common attribute for this purpose. This rule applies regardless of whether the component plan or the plan of which it is a part satisfies the ratio or percentage test of section 410(b).

Par. 6. Section 1.401(m)–2 is amended as follows:

1. A sentence is added at the end of paragraph (a).
2. Paragraph (b)(1) is revised.
3. Paragraph (c)(1) and (c)(4), *Example 1* (i), is revised.
4. The added and revised provisions read as follows:

§ 1.401(m)–2 Multiple use of alternative limitation.

(a) * * * The consequences of multiple use of the alternative methods of compliance are described in § 1.401(m)–1(a)(1).

(b) *General rule for determination of multiple use—(1) In general.* (i) Multiple use of the alternative limitation occurs if all of the conditions of this paragraph (b)(1) are satisfied:

(A) One or more highly compensated employees of the employer are eligible employees in both a cash or deferred arrangement subject to section 401(k) and a plan maintained by the employer subject to section 401(m).

(B) The sum of the actual deferral percentage of the entire group of eligible highly compensated employees under the arrangement subject to section 401(k) and the actual contribution percentage of the entire group of eligible highly compensated employees under the plan subject to section 401(m) exceeds the aggregate limit of paragraph (b)(3) of this section.

(C) The actual deferral percentage of the entire group of eligible highly compensated employees under the arrangement subject to section 401(k) exceeds the amount described in section 401(k)(3)(A)(ii)(I).

(D) The actual contribution percentage of the entire group of eligible highly compensated employees under the arrangement subject to section 401(m) exceeds the amount described in section 401(m)(2)(A)(i).

(ii) The actual deferral percentage and actual contribution percentage of the group of eligible highly compensated employees are determined after use of qualified nonelective contributions and qualified matching contributions to meet the requirements of section 401(k)(3)(A)(ii) and after use of qualified nonelective contributions and elective contributions to meet the requirements of section 401(m)(2)(A). The actual deferral percentage and actual contribution percentage of the group of eligible highly compensated employees are determined after any corrective

distribution or forfeiture of excess deferrals, excess contributions, or excess aggregate contributions and after any recharacterization of excess contributions required without regard to this section. Only plans and arrangements maintained by the same employer are taken into account under this paragraph (b)(1). If the employer maintains two or more plans after application of the rules under § 1.401(k)– 1(g)(11), multiple use is tested separately with respect to each plan. Thus, for example, if an employer maintains a cash or deferred arrangement with matching contributions, under which elective contributions may be made under either an ESOP or a non-ESOP, multiple use is tested separately with respect to elective contributions and matching contributions under the ESOP, and with respect to elective contributions and matching contributions under the non-ESOP.

* * * * *

(c) * * * (1) *In general.* If multiple use of the alternative limitation occurs with respect to two or more plans or arrangements maintained by an employer, it must be corrected by reducing the actual deferral percentage, the actual contribution percentage of highly compensated employees, or a combination of the two, in the manner described in paragraph (c)(3) of this section. Instead of making this reduction, the employer may eliminate the multiple use of the alternative limitation by making qualified nonelective contributions in accordance with § 1.401(k)–1(b)(5) and (f)(1) or § 1.401(m)–1(b)(5) and (e)(1).

* * * * *

(4) * * *

Example 1. (i) All employees of Employer Q are eligible in both an arrangement subject to section 401(k) and a plan subject to section 401(m). Both plans have a calendar plan year. The plans provide that multiple use of the alternative limitation will be corrected in the plan subject to section 401(m) and that any required reduction in actual contribution ratios will apply only to employees eligible to participate in both arrangements. Employer Q includes elective contributions in compensation as permitted under § 1.414(s)–1(c)(4)(i). See § 1.401(k)–1(g)(2)(i). Employees X and Y are highly compensated. Each received compensation of $100,000, deferred $6,000, received a $3,000 matching contribution, and made employee contributions of $3,000. Actual deferral and contribution percentages under the arrangement and plan for the 1989 plan year are shown below. No excess deferrals, excess contributions, or excess aggregate contributions have yet been required to be distributed, forfeited, or recharacterized under the plan.

	Actual deferral percentage	Actual contribution percentage
Highly compensated	6	6
Nonhighly compensated	4	4

* * * * *

Par. 7. Section 1.402(a)–1 is amended as follows:

1. Paragraph (d)(3)(iv) is revised.
2. Paragraph (d)(3)(v) is added.
3. The added and revised provisions read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

* * * * *

(d) * * *

(3) * * *

(iv) *Special rule for collectively bargained plans.* For plan years beginning before January 1, 1993, a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan (or portion of a plan) that automatically satisfies section 401(a)(4) under § 1.401(k)–1(a)(7), relating to certain collectively bargained plans.

(v) *Special rule for governmental plans.* For plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), a nonqualified cash or deferred arrangement will be treated as satisfying section 401(k)(3) solely for purposes of paragraph (d)(2)(i) of this section if it is part of a plan adopted by a state or local government before May 6, 1986. For purposes of this paragraph (d)(3)(v), the term *governing body with authority to amend the plan* means the legislature, board, commission, council, or other governing body with authority to amend the plan.

Par. 8. Section 1.402(g)–1 is amended as follows:

1. Paragraph (e)(5)(ii) is revised.
2. In paragraph (e)(11), paragraph (iv) of *Example 2,* is revised and paragraph (v) is removed.
3. The added and revised provisions read as follows:

§ 1.402(g)–1 Limitation on exclusion for elective deferrals.

(e) * * *

(5) * * *

(ii) *Method of allocating income.* A plan may use any reasonable method for computing the income allocable to excess deferrals, provided that the method does not violate section 401(a)(4), is used consistently for all participants and for all corrective distributions under a plan for the plan year, and is used by the plan for allocating income to participants' accounts. See § 1.401(a)(4)–1(c)(8).

* * * * *

(11) * * *

Example 2. * * *

(iv) In February 1990, B notifies X that B made elective deferrals of $2,000 under a qualified cash or deferred arrangement maintained by an unrelated employer in 1989, and requests distribution of $2,000 from X's plan. However, since B has already received a distribution of $2,002 to meet the ADP test, no additional amounts are required or are permitted to be distributed as excess deferrals by this plan, and the prior distribution of excess contributions has corrected the excess deferrals. But X must report $2,000 as a distribution of an excess deferral and $2 as a distribution of an excess contribution.

* * * * *

Par. 9. In § 1.411(d)–4, A–2 is amended by revising paragraph (b)(2) (x) and (xi) to read as follows:

1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(b) * * *

(2) * * *

(x) *Amendment of hardship distribution standards.* A qualified cash or deferred arrangement that permits hardship distributions under § 1.401(k)–1(d)(2) may be amended to specify or modify nondiscriminatory and objective standards for determining the existence of an immediate and heavy financial need, the amount necessary to meet the need, or other conditions relating to eligibility to receive a hardship distribution. For example, a plan will not be treated as violating section 411(d)(6) merely because it is amended to specify or modify the resources an employee must exhaust to qualify for a hardship distribution or to require employees to provide additional statements or representations to establish the existence of a hardship. A qualified cash or deferred arrangement may also be amended to eliminate hardship distributions. The provisions of this paragraph also apply to profit-sharing or stock bonus plans that permit hardship distributions, whether or not the hardship distributions are limited to those described in § 1.401(k)–1(d)(2).

(xi) *Section 415 benefit limitations.* Accrued benefits under a plan as of the first day of the first limitation year beginning after December 31, 1986, that exceed the benefit limitations under

section 415 (b) or (e), effective on the first day of the plan's first limitation year beginning after December 31, 1986, because of a change in the terms and conditions of the plan made after May 5, 1986, or the establishment of a plan after that date, may be reduced to the level permitted under section 415 (b) or (e).

* * * * *

Par. 10. Section 1.415–6 is amended by revising paragraph (b)(6)(iv) to read as follows:

§ 1.415–6 Limitation for defined contribution plans.

* * * * *

(b) * * *

(6) * * *

(iv) Notwithstanding paragraph (b)(6)(i), (ii), or (iii) of this section, the plan may provide for the distribution of elective deferrals (within the meaning of section 402(g)(3)) or the return of employee contributions (whether voluntary or mandatory), and for the distribution of gains attributable to those elective deferrals and employee contributions, to the extent that the distribution or return would reduce the excess amounts in the participant's account. These distributed or returned amounts are disregarded for purposes of section 402(g), the actual deferral percentage test of section 401(k)(3), and the actual contribution percentage test of section 401(m)(2). However, the return of mandatory employee contributions may result in discrimination in favor of highly compensated employees. If the plan does not provide for the return of gains attributable to the returned employee contributions, such earnings will be considered as an employee contribution for the limitation year in which the returned contribution was made. For limitation years beginning after December 31, 1995, if a plan does not provide for the distribution of gains attributable to the distributed elective deferrals, such earnings will be considered as an employer contribution for the limitation year in which the distributed elective deferral was made. If a suspense account is in existence at any time during the limitation year in accordance with this subparagraph, investment gains and losses and other income may, but need not, be allocated to the suspense account. To the extent that investment gains or other income or investment losses are allocated to the suspense account, the entire amount allocated to participants from the suspense account, including any such gains or other income or less any such losses, is considered as the annual addition. See § 1.401(a)–2(b) for provisions relating to the disposition of a suspense account in existence upon termination of a plan.

* * * * *

PART 54—PENSION EXCISE TAXES

Par. 11. The authority citation for part 54 continues to read in part as follows:

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

Par. 12. Section 54.4979–0 is amended as follows:

1. The entry for § 54.4979–1, paragraph (d)(4) is revised.
2. The entry for § 54.4979–1, paragraph (d)(5) is removed.

The revised entry reads as follows:

§ 54.4979–0. Excise tax on certain excess contributions and excess aggregate contributions, table of contents.

* * * * *

§ 54.4979–1 * * *

(d) * * *

(4) Plan years beginning before January 1, 1992.

Par. 13. Section 54.4979–1 is amended as follows:

1. Paragraph (d)(1) is revised.
2. Paragraph (d)(3) is revised.
3. Paragraph (d)(4) is removed.
4. Paragraph (d)(5) is redesignated as paragraph (d)(4).

The revised provisions read as follows:

§ 54.4979–1 Excise tax on certain excess contributions and excess aggregate contributions.

(d) *Effective date*—(1) *General rule.* Except as provided in paragraphs (d)(2) through (4), this section is effective for plan years beginning after December 31, 1986.

* * * * *

(3) *Collectively bargained plans and plans of state or local governments.* For plan years beginning before January 1, 1993, the provisions of this section do not apply to a collectively bargained plan that automatically satisfies the requirements of section 410(b). See §§ 1.401(a)(4)–1(c)(5) and 1.410(b)–2(b)(7) of this chapter. In the case of a plan (including a collectively bargained plan) maintained by a state or local government, the provisions of this section do not apply for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. For purposes of this paragraph (d)(3), the term *governing body with authority to amend the plan* means the legislature, board, commission, council, or other governing body with authority to amend the plan.

(4) *Plan years beginning before January 1, 1992.* * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 13, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–31427 Filed 12–22–94; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8578]

RIN 1545–AP23

Election Out of Subchapter K for Producers of Natural Gas

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the regulations under section 761 of the Internal Revenue Code relating to the election out of subchapter K of chapter 1 of the Code. The final regulations contain certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to make or maintain an election under section 761. The final regulations provide that the co-producers under a joint operating agreement must use one of two permissible methods described in the regulations in reporting income from gas sales and certain related deductions and credits.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Grace Kim, 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1338. The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 45 minutes depending on individual circumstances, with an estimated average of 30 minutes.

These estimates are approximations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, D.C. 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Background

On September 16, 1992, a notice of proposed rulemaking (PS–103–90) was published in the **Federal Register** (57 FR 42712) proposing amendments to the Income Tax Regulations (26 CFR part 1, 602) under section 761 of the Internal Revenue Code (Code). A notice of hearing relating to the proposed regulations was published in that same issue (57 FR 42720), and a public hearing was held on November 17, 1992. After consideration of all written and oral comments regarding the proposed amendments, the proposed regulations are adopted as revised by this Treasury decision. These regulations are issued under the authority contained in sections 446(b), 761(a), and 7805.

Explanation of Provisions

In General

Except for modifications in response to comments, these final regulations generally provide the same rules as the proposed regulations. Thus, the final regulations prescribe the methods of accounting for gas sales that may be used by co-producers of a gas producing property that seek to make or maintain an election under section 761(a) of the Code. Co-producers must use either the cumulative gas balancing method (cumulative method) or the annual gas balancing method (annual method). The final regulations require permission of the Commissioner to use the annual method. This is to ensure that the co-producers (particularly those with different taxable year-ends) properly take income and deductions into account.

Changes to the Proposed Regulations in Response to Comments

I. Effective Date and Transitional Rules

The proposed regulations apply to co-producers under an existing gas balancing agreement (GBA) or "any agreement similar to a gas balancing agreement" in effect on or after September 16, 1992, for taxable years beginning on or after that date. They also provide an automatic consent procedure for gas co-producers under existing GBAs to change their method of accounting and the rules for taking the related section 481(a) adjustments into account.

Commentators have expressed uncertainty as to the meaning of "an agreement similar to a gas balancing agreement," *e.g.*, whether a joint operating agreement (JOA), without a formal GBA, is a similar agreement. Additionally, commentators asserted that the automatic consent procedure was overly burdensome and the section 481(a) adjustment rules were in some cases impractical. Some recommended that the regulations be entirely prospective and that the effective date be delayed.

The final regulations are revised to remove the uncertainty concerning the meaning of "an agreement similar to a gas balancing agreement," and are to apply to all gas co-producers operating under a JOA, without regard to whether a GBA exists. Additionally, the final regulations are revised to simplify the automatic consent procedure and to delay the effective date so as to apply to gas co-producers under JOAs in effect on or after the start of their first taxable year beginning after December 31, 1994. If, however, the co-producers under a JOA do not all have the same taxable year and they are changing to the annual method, the regulations apply on and after January 1, 1996, with respect to that JOA. Finally, although the final regulations maintain the six-year section 481(a) adjustment period, they are revised to add an election to take an aggregate section 481(a) adjustment for all JOAs, whether negative or positive, into account in the year of the change in method of accounting.

II. Entitlements Method as Elective Method

A commentator suggested that the entitlements method be adopted as an elective method or as a replacement for the annual method. Under the entitlements method, a co-producer reports income currently only for its proportionate share of current production under the JOA.

The final regulations do not adopt this suggestion because total income for tax purposes should be reported on the basis of the relative economics of current production, rather than entitlement under the JOA.

III. Consequences of Noncompliance

Commentators indicated that the requirement of the proposed regulations that all co-producers under the same GBA use the same permissible gas balancing method might be construed as meaning that one co-producer's noncompliance would cause the section 761 election of all of the co-producers to be revoked.

Accordingly, the final regulations are revised to require that all co-producers under a JOA use the cumulative method, unless the co-producers are eligible to, and agree in writing, to use the annual method. The final regulations also clarify that the failure of a co-producer to follow this rule will be treated as the use of an impermissible method of accounting, but will not cause the co-producers' section 761 election to be revoked, unless the Commissioner determines that there was willful failure to comply.

IV. The Standard for Revoking a Section 761 Election Under the Cumulative Method

The proposed regulations contain an anti-abuse rule under which the section 761 election of certain co-producers using the cumulative method could be revoked. The standard for applying the anti-abuse rule is a determination that "a principal purpose" of shifting income, deductions, or credits is to avoid tax. Commentators suggested replacing "a principal purpose" with "the principal purpose." After careful consideration of the comments, the Service and Treasury have concluded that the standard contained in the proposed regulations is appropriate. Thus, the anti-abuse rule in the proposed regulations is finalized.

V. Requests for Clarification Under the Cumulative Method

Commentators requested certain clarifying changes under the cumulative method relating to depletion deductions and the section 29 credit for producing fuel from a nonconventional source. First, the rule that a taking co-producer's deduction for making a payment to a co-producer is reduced by the amount of any depletion deduction allowed on the related gas sales is revised to make it clear that the payment deduction is reduced only by the taking co-producer's percentage depletion deduction allowed on the related sales. The final regulations are not modified to clarify the section 29 credit issues because this project is not the appropriate one for addressing these issues.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is H. Grace Kim of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *. Section 1.761–2 also issued under 26 U.S.C. 446(b) and 26 U.S.C. 761(a). * * *

Par. 2. Section 1.761–2 is amended as follows:

1. The section heading for § 1.761–2 is revised.
2. A sentence is added to the end of paragraph (a)(3) concluding text.
3. Paragraph (d) is redesignated as paragraph (e).
4. New paragraph (d) is added.
5. The revised and added provisions read as follows:

§ 1.761–2 Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.

(a) * * *

(3) * * *

* * * In addition, except as provided in paragraph (d)(2)(i) of this section, this paragraph (a)(3) does not apply to any unincorporated organization that produces natural gas under a joint operating agreement, unless all members of the unincorporated organization comply with paragraph (d) of this section.

* * * * *

(d) *Rules for gas producers that produce natural gas under joint operating agreements*—(1) *Joint operating agreements and gas balancing.* Co-owners of a property producing natural gas enter into a joint operating agreement (JOA) to define the rights and obligations of each co-producer of the gas in place. The JOA determines, among other things, each co-producer's proportionate share of the natural gas as it is produced from the reservoir, together with the associated production expenses. A gas imbalance arises when a co-producer does not take its proportionate share of current gas production under the JOA (underproducer) and another co-producer takes more than its proportionate share of current production (overproducer). The co-producers often enter into a gas balancing agreement (GBA) as an addendum to their JOA to establish their rights and obligations when a gas imbalance arises. A GBA typically allows the overproducer to take the amount of the gas imbalance (overproduced gas) and entitles the underproducer to recoup the overproduced gas either from the volume of the gas remaining in the reservoir or by a cash balancing payment.

(2) *Permissible gas balancing methods*—(i) *General requirement.* All co-producers of natural gas operating under the same JOA must use the cumulative gas balancing method, as described in paragraph (d)(3) of this section, unless they use the annual gas balancing method described in paragraph (d)(4) of this section. A co-producer's failure to comply with the provisions of this paragraph (d)(2)(i) generally constitutes the use of an impermissible method of accounting, requiring a change to a permissible method under § 1.4461(e)(3) with any terms and conditions as may be imposed by the Commissioner. The co-producers' election to be excluded from all or part of subchapter K will not be revoked, unless the Commissioner determines that there was willful failure to comply with the requirements of this paragraph (d)(2)(i).

(ii) *Change in method of accounting; adoption of method of accounting*—(A) *In general.* The annual gas balancing method and the cumulative gas balancing method are methods of accounting. Accordingly, a change to or from either of these methods is a change in method of accounting that requires the consent of the Commissioner. See section 446(e) and § 1.446–1(e). For purposes of this section, each JOA is treated as a separate trade or business. Paragraph (d)(2)(ii)(B) of this section provides rules for adopting either permissible method of accounting. Paragraph (d)(2)(ii)(C) of this section provides rules on the timing of required changes to either permissible method during the transitional period, and paragraph (d)(5) of this section contains the procedural provisions for making a change in method of accounting required in paragraph (d)(2)(ii)(C) of this section.

(B) *Adoption of method of accounting.* A co-producer must adopt a permissible method for each JOA entered into on or after the start of the co-producer's first taxable year beginning after December 31, 1994 (or, in the case of the use of the annual gas balancing method by co-producers not having the same taxable year, the start of the first taxable year beginning after December 31, 1994, of the co-producer whose taxable year begins latest in the calendar year). If a co-producer is adopting the cumulative method, the co-producer may adopt the method by using the method on its timely filed return for the taxable year of adoption. A co-producer may adopt the annual gas balancing method with the permission of the Commissioner under guidelines set forth in paragraph (d)(4)(ii) of this section.

(C) *Required change in method of accounting for certain joint operating agreements.* This paragraph (d)(2)(ii)(C) applies to certain JOAs entered into prior to 1996. Except in the case of a part-year change in method of accounting or in the case of the cessation of a JOA (both of which are described in this paragraph (d)(2)(ii)(C)), for each JOA entered into prior to a co-producer's first taxable year beginning after December 31, 1994, and in effect as of the beginning of that year, the co-producer must change its method of accounting for sales of gas and its treatment of certain related deductions and credits to a permissible method as of the start of its first taxable year beginning after December 31, 1994. In the case of a JOA of co-producers that do not all have the same taxable year and that choose the annual gas balancing method, if the JOA is entered into prior to the first taxable year beginning after December 31, 1994 of the co-producer whose taxable year begins latest in the calendar year and the JOA is in effect as of January 1, 1996, a change to the annual gas

balancing method by each co-producer under that JOA is made as of January 1, 1996 (part-year change in method of accounting). If the co-producers would have made a part-year change to the annual gas balancing method but for the fact that their JOA ceased to be in effect before January 1, 1996 (cessation of a JOA), the co-producers do not change their method of accounting with respect to the JOA. Rather, for their taxable years in which the JOA ceases to be in effect, the co-producers use their current method of accounting with respect to that JOA.

(3) *Cumulative gas balancing method*—(i) *In general.* The cumulative gas balancing method (cumulative method), solely for purposes of reporting income from gas sales and certain related deductions and credits, treats each co-producer under the same JOA as the sole owner of its percentage share of the total gas in the reservoir and disregards the ownership arrangement described in the JOA for gas as it is produced from the reservoir. Each co-producer is considered to be taking only its share of the total gas in the reservoir as long as the gas remaining in the reservoir is sufficient to satisfy the ownership rights of the co-producers in their percentage shares of the total gas in the reservoir. After a co-producer has taken its entire share of the total gas in the reservoir, any additional gas taken by that co-producer (taking co-producer) is treated as having been taken from its other co-producers' shares of the total gas in the reservoir. The effect of being treated as a taking co-producer under the cumulative method is that the taking co-producer generally may not claim an allowance for depletion and a production credit on its sales of its other co-producers' percentage shares of the total gas in the reservoir.

(ii) *Requirements*—(A) *Reporting of income from sales of gas.* Under the cumulative method, each co-producer must include in gross income under its overall method of accounting the amount of its sales from all gas produced from the reservoir, including sales of gas taken from another co-producer's share of the gas in the reservoir.

(B) *Reporting of deduction of taking co-producer.* A taking co-producer deducts the amount of a payment (in cash or property, other than gas produced under the JOA) made to another co-producer for sales of that co-producer's gas, but only for the taxable year in which the payment is made. Thus, an accrual method taking co-producer is not permitted a deduction for any obligation it has to pay another co-producer for sales of that co-producer's gas until a payment is made. See paragraph (d)(3)(iii)(B) of this section for a rule requiring a reduction of the amount of the deduction described in this paragraph (d)(3)(ii)(B) if the taking co-producer had mistakenly claimed a depletion deduction relating to those sales.

(C) *Reporting of income by other co-producers.* Any co-producer that is entitled to receive a payment from a taking co-producer must include the amount of the payment in gross income as proceeds from the sale of its gas only for the taxable year that the payment is actually received, regardless of its overall method of accounting.

(D) *Reporting of production expenses.* Each co-producer deducts its proportionate share of production expenses, as provided in the JOA, under its regular method of accounting for the expenses.

(iii) *Special rules for production credits and depletion deductions under the cumulative method*—(A) *In general.* Under the cumulative method, a co-producer's depletion allowance and production credit for a taxable year are based on its income from gas sales and production of gas from its percentage share of the total gas in the reservoir, and are not based on its current proportionate share of income and production as determined under the JOA. Thus, in general, a taking co-producer is not allowed a production credit or an allowance for depletion on its sales of gas in excess of its percentage share of the total gas in the reservoir. However, the Service will not disallow depletion deductions or production credits claimed by a taking co-producer on the gas of other co-producers if the taking co-producer had a reasonable but mistaken belief that the deductions or credits were claimed with respect to the taking co-producer's percentage share of total gas in the reservoir and the taking co-producer makes the appropriate reductions and additions to tax required in paragraphs (d)(3)(iii)(B) and (d)(3)(iii)(C) of this section. The reasonableness of the mistaken belief is determined at the time of filing the return claiming the deductions or credits. A co-producer receiving a payment for sales of its gas from a taking co-producer claims a production credit and an allowance for depletion relating to those sales only for the taxable year in which the amount of the payment is included in its gross income.

(B) *Reduction of taking co-producer's payment deduction for depletion claimed on another co-producer's gas.* If a taking co-producer claims an allowance for depletion on another co-producer's gas, the taking co-producer must reduce its deduction claimed in a later year for making a payment to the other co-producer for sales of that co-producer's gas by the amount of any percentage depletion deduction allowed on the gas sales to which the payment relates. If the percentage limitation of section 613A(d)(1) applied to disallow a depletion deduction for a previous year, the taking co-producer must reduce the amount of any carried over depletion deduction allowable in the year of the payment or in a future year by the portion of the carried over depletion deduction, if any, that relates to another co-producer's gas.

(C) *Addition to tax of taking co-producer for production credit claimed on another co-producer's gas.* If a taking co-producer claims a production credit on another co-producer's gas, the taking co-producer must add to its tax for the taxable year that it makes a payment to the other co-producer for sales of that co-producer's gas any production credit allowed in an earlier taxable year on the gas sales to which the payment relates, but only to the extent the credit allowed actually reduced the taking co-producer's tax in any earlier year. The taking co-producer also must reduce the amount of its minimum tax credit allowable by reason of section 53(d)(1)(B)(iii) in the year of the payment or in a future year by the portion of the credit, if any, that relates to another co-producer's gas.

(iv) *Anti-abuse rule.* If the Commissioner determines that co-producers using the cumulative method have arranged or altered their taking of production for a taxable year with a principal purpose of shifting the income, deductions, or credits relating to that production to avoid tax, the co-producers' election to be excluded from all or part of subchapter K will be revoked for that year and for subsequent years. In determining that a principal purpose was to avoid tax, the Commissioner will examine all the facts and circumstances surrounding the use of the cumulative method by the co-producers. See *Examples 3* and *4* of paragraph (d)(6) of this section.

(4) *Annual gas balancing method*—(i) *In general.* The annual gas balancing method (annual method) takes into account each co-producer's ownership rights and obligations, as described in the JOA, with respect to the co-producer's current proportionate share of gas as it is produced from the reservoir. Under the annual method, gas imbalances relating to a JOA must be eliminated annually through a balancing payment, which may be in the form of cash, gas produced under the same JOA,

or other property. If all the co-producers under a JOA have the same taxable year, any gas imbalance remaining at the end of a taxable year must be eliminated by a balancing payment from the overproducer to the underproducer by the due date of the overproducer's tax return for that taxable year (including extensions). If all the co-producers under a JOA do not have the same taxable year, any gas imbalance remaining at the end of a calendar year must be eliminated by a balancing payment from the overproducer to the underproducer by September 15 of the following calendar year. The annual method may be used only if the Commissioner's permission is obtained. Paragraph (d)(4)(ii) of this section provides guidelines for applying for this permission. The annual method is not available for a JOA with respect to which any co-producer made an election under paragraph (d)(5)(i)(B)(*3*) of this section (to take an aggregate section 481(a) adjustment for all JOAs of a co-producer into account in the year of change).

(ii) *Obtaining the Commissioner's permission to use the annual method.* A request for the Commissioner's permission to adopt the annual method for a new JOA must be in writing and must set forth the names of all the co-producers under the JOA and the respective taxable year of adoption. See paragraphs (d)(2)(ii) and (d)(5)(ii) of this section for the rules for a change in method of accounting to the annual method. In addition, the request must contain an explanation of how the co-producers will report income from gas sales, the making or receiving of a balancing payment, production expenses, depletion deductions, and production credits. Permission will be granted under appropriate conditions, including, but not limited to, an agreement in writing by all co-producers to use the annual method and to eliminate any gas imbalances annually in accordance with paragraph (d)(4)(i) of this section.

(5) *Transitional rules for making a change in method of accounting required in paragraph (d)(2)(ii)(C) of this section*—(i) *Change in method of accounting to the cumulative method*—(A) *Automatic consent to change in method of accounting to the cumulative method.* A co-producer changing to the cumulative method for any JOA entered into prior to its first taxable year beginning after December 31, 1994, and in effect as of the beginning of that year is granted the consent of the Commissioner to change its method of accounting with respect to each JOA to the cumulative method, provided the co-producer—

(*1*) Makes the change on its timely filed return for its first taxable year beginning after December 31, 1994;

(*2*) Attaches a completed and signed Form 3115 to the co-producer's tax return for the year of change, stating that, pursuant to § 1.761–2(d)(2)(ii) of the regulations, the co-producer is changing its method of accounting for sales of gas and its treatment of certain related deductions and credits under each JOA to the cumulative method;

(*3*) In the case of a co-producer making an election under paragraph (d)(5)(i)(B)(*3*) of this section to take the aggregate section 481(a) adjustment into account in the year of change, attaches the statement described in paragraph (d)(5)(i)(B)(*3*)(*ii*) of this section; and

(*4*) In the case of a co-producer not making an election under paragraph (d)(5)(i)(B)(*3*) of this section, attaches a list of each JOA with respect to which there is a section 481(a) adjustment computed in accordance with paragraph (d)(5)(i)(B)(*2*)(*i*) of this section.

(B) *Section 481(a) adjustment*—(*1*) *Application of section 481(a).* A change in method of accounting to the cumulative method under the automatic consent procedure in paragraph (d)(5)(i)(A) of this section is a change in method of accounting to which the provisions of section 481(a) apply. Thus, a section 481(a) adjustment must be taken into account in the manner provided by this paragraph (d)(5)(i)(B) to prevent the omission or duplication of income. Paragraph (d)(5)(i)(B)(*2*) of this section provides the general rules for computing the amount of the section 481(a) adjustment of a co-producer relating to a particular JOA and for taking the section 481(a) adjustment into account. Paragraph (d)(5)(i)(B)(*3*) of this section provides rules for electing to take a co-producer's section 481(a) adjustment computed on an aggregate basis for all JOAs into account in the year of change. Paragraph (d)(5)(i)(C) of this section provides rules to coordinate the taking of a depletion deduction or a production credit with the inclusion of a section 481(a) adjustment arising from a change in method of accounting to the cumulative method under this paragraph (d)(5)(i).

(*2*) *Computation of the section 481(a) adjustment relating to a joint operating agreement*—(*i*) *In general.* The section 481(a) adjustment of a co-producer relating to a JOA is computed as of the first day of the co-producer's year of change and is equal to the difference between the amount of income reported under the co-producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the co-producer's new method had been used in all those taxable years.

(*ii*) *Section 481(a) adjustment period.* Except to the extent that paragraph (d)(5)(i)(B)(*3*) of this section applies, a co-producer's section 481(a) adjustment relating to a JOA, whether positive or negative, is taken into account in computing taxable income ratably over the 6-taxable-year period beginning with the year of change (the section 481(a) adjustment period). If the co-producer has been in existence less than 6 taxable years, the adjustment is taken into account over the number of years the co-producer has been in existence. If the co-producer ceases to engage in the trade or business that gave rise to the section 481(a) adjustment at any time during the section 481(a) adjustment period, the entire remaining balance of the section 481(a) adjustment relating to that trade or business must be taken into account in the year of the cessation. For purposes of this paragraph (d)(5)(i)(B)(*2*)(*ii*), production under each JOA is treated as a separate trade or business. The determination as to whether the co-producer ceases to engage in its trade or business is to be made under the principles of § 1.446–1(e)(3)(ii) and its underlying administrative procedures. For example, the permanent cessation of production under a co-producer's JOA constitutes the cessation of a trade or business of the co-producer. Accordingly, for the year that production under a JOA permanently ceases, the remaining balance of the section 481(a) adjustment relating to the JOA must be taken into account.

(*3*) *Election to take aggregate section 481(a) adjustment for all joint operating agreements into account in the year of change*—(*i*) *In general.* A co-producer may elect to take into account its section 481(a) adjustment, computed on an aggregate basis for all of its JOAs, whether negative or positive, in the year of change, provided the co-producer uses the cumulative method for all of its JOAs entered into prior to its first taxable year beginning after December 31, 1994, and in effect as of the beginning of that year. The aggregate section 481(a) adjustment of a co-producer is equal to the difference between the amount of income reported under the co-producer's former method of accounting for all taxable years prior to the year of change and the amount of income that would have been reported if the co-producer's new method had been used in all those taxable years for all JOAs for which the co-producer changes its method of accounting. An

election made under this paragraph (d)(5)(i)(B)(*3*) is irrevocable. If any person who, together with another person, would be treated as a single taxpayer under section 41(f)(1) (A) or (B) makes an election under this paragraph (d)(5)(i)(B)(*3*), all persons within that single taxpayer group will be treated as if they had made an election under this paragraph (d)(5)(i)(B)(*3*) and, as such, will be irrevocably bound by that election. If a co-producer does not make an election under this paragraph, each JOA entered into prior to the start of its first taxable year beginning after December 31, 1994, and in effect as of the beginning of that year must be accounted for separately in computing the section 481(a) adjustment and taxable income of the co-producer for any year to which this paragraph (d) applies.

(*ii*) *Time and manner for making the election.* An election under this paragraph (d)(5)(i)(B)(*3*) is made by attaching a statement to the co-producer's timely filed return for its year of change indicating that the co-producer is electing under § 1.761–2(d)(5)(i)(B)(*3*) to take its aggregate section 481(a) adjustment into account in the year of change.

(C) *Treatment of section 481(a) adjustment as a sale for purposes of computing a production credit and as gross income from the property for purposes of depletion deductions.* Any positive section 481(a) adjustment arising as a result of a change in method of accounting for gas imbalances under this paragraph (d)(5)(i) and taken into account in computing taxable income under paragraph (d)(5)(i)(B) of this section is considered a sale by the taxpayer for purposes of computing any production credit in the year that the adjustment is taken into account. Similarly, the positive section 481(a) adjustment is considered *gross income from the property* and *taxable income from the property* for purposes of computing depletion deductions in the year the adjustment is taken into account. Sales amounts used in computing any production credit in any year in which a negative section 481(a) adjustment is taken into account in computing taxable income under paragraph (d)(5)(i)(B) of this section must be reduced by the amount of the negative section 481(a) adjustment taken into account in that year. Similarly, gross income from the property and taxable income from the property used in computing any depletion deduction in any year in which the negative section 481(a) adjustment is taken into account must be reduced by the amount of the negative adjustment. For these purposes, any taxpayer that makes an aggregate section 481(a) adjustment election under paragraph (d)(5)(i)(B)(*3*) of this section must allocate the adjustment among its properties in any reasonable manner that prevents a duplication or omission of depletion deductions.

(ii) *Change in method of accounting to the annual method*—(A) *In general.* A co-producer changing to the annual method in accordance with paragraph (d)(2)(ii) of this section must request a change under § 1.446–1(e)(3) and will be subject to any terms and conditions as may be imposed by the Commissioner.

(B) *Section 481(a) adjustment.* A change in method of accounting to the annual method is a change in method of accounting to which the provisions of section 481(a) apply. Thus, a section 481(a) adjustment must be taken into account to prevent the omission or duplication of income. If all the co-producers under a JOA have the same taxable year, the section 481(a) adjustment involved in a change to the annual method by a co-producer relating to the JOA is computed as of the first day of the co-producer's year of change. If the co-producers under a JOA do not all have the same taxable year (that is, in the case of a part-year change described in paragraph (d)(2)(ii)(C) of this section), the change in method of accounting occurs on January 1, 1996, and the section 481(a) adjustment is computed on that date.

(iii) *Untimely change in method of accounting to comply with this section.* Unless a co-producer required by this section to change its method of accounting complies with the provisions of this paragraph (d)(5) for its first applicable taxable year within the time prescribed by this paragraph (d)(5), the co-producer must take the section 481(a) adjustment into account under the provisions of any applicable administrative procedure that is prescribed by the Commissioner specifically for purposes of complying with this section. Absent such an administrative procedure, a co-producer must request a change under § 1.446–1(e)(3) and will be subject to any terms and conditions as may be imposed by the Commissioner.

(6) *Examples.* The following examples illustrate the application of the cumulative method described in paragraph (d)(3) of this section.

Example 1. Operation of the cumulative method. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On January 1, 1995, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y. The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 2000 during which year production from the reservoir ceases:

	1995	1996	1997	1998	1999	2000
L	720	480	600	–0–	–0–	–0–
M	240	60	120	160	80	40

(ii) By the end of 1996, neither L nor M has fully produced its percentage share of the total gas in the reservoir. In 1997, L produces a total of 600 mmcf of gas at the rate of 50 mmcf per month. Prior to filing its return for 1997, L determines that it fully produced its percentage share of gas in the reservoir as of June 30, 1997. Pursuant to the GBA executed by L and M, L pays M at the end of 2000 for the 300 mmcf of M's gas (as determined under the cumulative method) that L sold in the last half of 1997.

(iii) For 1995, L and M must include in their gross income the amounts relating to gas sales of 720 mmcf and 240 mmcf, respectively. For 1996, L and M must include the amounts relating to gas sales of 480 mmcf and 60 mmcf, respectively. For both 1995 and 1996, L and M compute an allowance for depletion and a section 29 credit based upon gas taken and sold by each from the reservoir for each taxable year.

(iv) For 1997, L and M must include in gross income the amounts relating to their gas sales of 600 mmcf and 120 mmcf, respectively. Under paragraph (d)(3)(iii)(A) of this section, L computes an allowance for depletion and the section 29 credit based only on production from L's proportionate share of gas in the reservoir (that is, based on L's production through June 30, 1997). Accordingly, for 1997, L claims depletion and the section 29 credit only with respect to 300 mmcf of gas (50 mmcf per month x 6 months). For 1997, because M has not fully produced from its percentage share of the

total gas in the reservoir as of the end of 1997, M claims depletion and the section 29 credit on the 120 mmcf that M produced in 1997

(v) In 1998 and 1999, M must include in gross income the amounts relating to M's sales of gas, that is, 160 mmcf for 1998 and 80 mmcf for 1999. For 2000, M must include in gross income the amount relating to sales of 340 mmcf of gas, which consists of its own sales of 40 mmcf plus the payment for 300 mmcf of gas that L made to M for having sold from M's share of the total gas in the reservoir during the last half of 1997 Because M produced from its percentage share of the total gas in the reservoir during 1998, 1999, and 2000, M claims a depletion deduction and a section 29 credit on its income and production for those years, that is, 160 mmcf for 1998, 80 mmcf for 1999, and 40 mmcf for 2000. Additionally, for 2000, M claims depletion and the section 29 credit relating to the payment that M received from L for the 300 mmcf of M's gas that L sold in the last half of 1997 Under paragraph (d)(3)(ii)(B) of this section, L's deduction for its payment to M for the 300 mmcf of M's gas that L sold in 1997 is allowable only for 2000.

Example 2. Adjustments under the cumulative method for depletion deductions and production credits that were claimed for sales in excess of a co-producer's percentage share of total gas in the reservoir. (i) L, a corporation using the cash receipts and disbursements method of accounting, and M, a corporation using an accrual method, file returns on a calendar year basis. On January 1, 1995, L and M enter into a JOA to produce natural gas as an unincorporated organization from a reservoir located in State Y The JOA allocates reservoir production 60 percent to L and 40 percent to M. L and M enter into a GBA as an addendum to the JOA. L and M agree to use the cumulative method to account for gas sales from the reservoir and elect under section 761(a) and this section to exclude the organization from the application of subchapter K. Production from the reservoir is eligible for the section 29 credit for producing fuel from a nonconventional source. L and M produce and sell the following amounts of natural gas (in mmcf) until 2000 during which year production from the reservoir ceases:

	1995	1996	1997	1998	1999	2000
L	720	480	600	60	60	–0–
M	240	60	120	60	60	40

(ii) In addition, L does not realize until December 31, 1999, that L fully produced its percentage share of the total gas in the reservoir as of June 30, 1997. At the time of filing its returns for 1997 and 1998, L reasonably believes that during 1997 and 1998, respectively, it did not fully produce its percentage share of the total gas in the reservoir. Thus, L claims depletion and the section 29 credit for its total sales of 600 mmcf in 1997 and 60 mmcf in 1998. Pursuant to the GBA executed by L and M, L pays M at the end of 2000 for the 420 mmcf of M's gas (as determined under the cumulative method) that L sold (300 mmcf in the last half of 1997 (assuming that production was at a rate of 50 mmcf per month), 60 mmcf in 1998, and 60 mmcf in 1999).

(iii) In 1997 and 1998, L and M include in gross income the amounts relating to their respective sales of gas, that is, for L 600 mmcf for 1997 and 60 mmcf for 1998, and for M 120 mmcf for 1997 and 60 mmcf for 1998.

(iv) For 1999, L must include in gross income the amount of its sales of 60 mmcf, but may not claim depletion or the section 29 credit on those sales. For 1999, M must include in gross income the amount of its sales of 60 mmcf and claims depletion and the section 29 credit with respect to those 60 mmcf.

(v) For 2000, M must include in gross income the amount relating to gas sales of 460 mmcf, that is, the amount of M's own gas sales of 40 mmcf and the amount of the payment received from L for the 420 mmcf of M's gas that L sold (consisting of 300 mmcf in 1997, 60 mmcf in 1998, and 60 mmcf in 1999). Under paragraph (d)(3)(iii)(A) of this section, M computes a depletion deduction and a production credit relating to the amount of M's actual gas sales for 2000 and the payment received from L, that is, relating to a total of 460 mmcf of gas (M's sales of 40 mmcf for 2000, plus L's payment for 420 mmcf of gas). Under paragraph (d)(3)(ii)(B) of this section, L's deduction for making its payment to M for 420 mmcf of gas is allowable only for 2000. Under paragraph (d)(3)(iii)(B) of this section, L must reduce its deduction by the amount of any percentage depletion deductions allowed on its sales of M's gas, that is, relating to 360 mmcf of gas (300 mmcf for 1997 and 60 mmcf for 1998). In addition, under paragraph (d)(3)(iii)(C) of this section, L must increase its tax for 2000 by the amount of any section 29 credit L claimed on its sales of M's gas, but only to the extent that the credit claimed actually reduced L's tax in any earlier year.

Example 3. Non-abusive altering of the taking of production for a taxable year. (i) C and D enter into a JOA and a GBA on December 1, 1994, for gas production from a reservoir. The JOA allocates production at 50 percent to C and 50 percent to D. C and D agree in writing to use the cumulative method to account for gas sales. Additionally, C and D elect under section 761(a) and this section to exclude their organization from the application of subchapter K. C and D arrange to sell all their production under annually renewable contracts. In 1995, C and D each sell 480 mmcf of gas from the reservoir.

(ii) In November 1995, D is notified that its contract with its purchaser will not be renewed for 1996. D is unable to find a new purchaser for its gas for 1996. In December 1995, D notifies C that it will not be taking production from the reservoir in 1996. Pursuant to the GBA, C then contracts with its current gas purchaser to sell an additional 20 mmcf per month in 1996. Accordingly, C sells 720 mmcf in 1996 (60 mmcf per month x 12 months). Under the facts described in this example, a principal purpose of altering the taking of production is not to avoid tax. Accordingly, the co-producers' election under section 761(a) will not be revoked by reason of altering the taking of production.

Example 4. Abusive altering of the taking of production for a taxable year. The facts are the same as in *Example 3*(i). For 1996, C anticipates that C's regular tax (reduced by the credits allowable under sections 27 and 28) will not exceed C's tentative minimum tax. Accordingly, under section 29(b)(6), C's credit allowed under section 29(a) for sales of its gas will be zero. For 1997, C anticipates that its credit allowed under section 29(a) will not be limited by section 29(b)(6). On the other hand, D anticipates that any credit it may claim under section 29(a) for 1996, even including a credit based on sales of C's share of current production under the JOA, will not be limited by section 29(b)(6). However, for 1997, D anticipates that its credit under section 29(a) will be limited by section 29(b)(6). On January 1, 1996, C and D agree that D will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1996 and that C will contract with its purchaser to sell the entire 960 mmcf produced from the reservoir in 1997. Under these facts, a principal purpose of altering the taking of production is to avoid tax. Accordingly, the co-producers' election under section 761(a) will be revoked for 1996 and for subsequent years.

(7) *Effective date.* Except in the case of a part-year change to the annual method or the cessation of a JOA, both of which are described in paragraph (d)(2)(ii)(C) of this section, the provisions of this paragraph (d) apply to all taxable years beginning after December 31, 1994, of any producer that is a member of an unincorporated organization that produces natural gas under a JOA in effect on or after the start of the producer's first taxable year beginning after December 31, 1994. In the case of a part-year change, the provisions of this paragraph (d) apply on and after January 1, 1996. In the case of the cessation of a JOA, the co-producers use their current method of accounting with respect to that JOA until the JOA ceases to be in effect.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. In § 602.101, paragraph (c) is amended by removing the existing entry for 1.761–2 and by adding the entry "1.761–2 * * * 1545–1338" in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Part 31

[TD 8582]

RIN 1545–AR08

Update of Railroad Retirement Tax Act Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the Railroad Retirement Tax Act (RRTA). These regulations update the existing RRTA regulations by removing obsolete provisions and adding new provisions to reflect the statutory changes that have occurred since the publication in 1964 of the existing RRTA regulations. In addition, because Tier 1 of the RRTA mirrors the Federal Insurance Contributions Act (FICA), these regulations generally cross-reference the definition of compensation under the RRTA to the definition of wages under the FICA. The regulations provide both railroad employers and IRS personnel with the guidance necessary to comply with the law.

DATES: These regulations are effective December 23, 1994. These regulations apply for calendar years beginning after December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Jean Whalen Casey at (202) 622–6040.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1993, the IRS published in the **Federal Register** (58 FR 28366) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3201 through 3231 of the Internal Revenue Code (Code).

Written comments were received from the public on the proposed regulations, and a public hearing was held on August 30, 1993. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The comments received focused on the definition of "employer" in § 31.3231(a)–1 and the definition of compensation in § 31.3231(e)–1.

Proposed Regulation § 31.3231(a)–1(c) describes the term "casual" as used in the phrase "casual service and the casual operation of equipment or facilities." Under the proposed regulations, the term "casual" applies, in part, whenever such service or operation is insubstantial. One commentator suggested the IRS adopt a bright line test in defining insubstantial. Specifically, the commentator suggested that service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad be presumed to be insubstantial whenever less than 10% of any company's revenues, work force, or payroll are derived from, devoted to, or provided to the carrier or carriers affiliated with the company. Situations can arise where one of the factors is less than 10% while the remaining factors are greater than 10%. It is not clear that the service or operation of equipment or facilities would be insubstantial in those situations. Therefore, this suggestion was not adopted.

The proposed regulations define "compensation" under the RRTA by referencing the definition of "wages" under the FICA. One commentator suggested that this reference be deleted because the statutory language of the two statutes differs. This suggestion was not adopted. The definition of wages under the FICA refers to "all remuneration for employment" while the definition of compensation under the RRTA refers to "any money remuneration paid to an individual." The commentator stated that Congress had the opportunity to conform the language of the two definitions and has not done so. While there are historical differences between the two statutes, there are significant similarities between the RRTA and the FICA. Legislation enacted since the adoption of the existing regulations has made the RRTA Tier 1 tax identical to the FICA tax as well as conforming the Tier 1 wage ceiling to the FICA wage ceiling. Along with conforming the structure of the RRTA to parallel that of the FICA, the exclusions from the definition of compensation under the RRTA, with few exceptions, mirror the exclusions from the definition of wages under the FICA. These exclusions from compensation include non-monetary benefits such as fringe benefits, meals and lodging excludable under section 119 of the Internal Revenue Code, and employer-paid life insurance premiums for group-term life insurance under $50,000. In amending RRTA, Congress often indicated the purpose was to provide conformity to FICA. Congress has added references to FICA provisions in the RRTA definition of successor employer (section 3231(e)(2)(C)) and the rules for nonqualified deferred compensation (section 3231(e)(8)). In addition, Tier 1 benefits are designed to be equivalent to social security benefits and are subject to federal income taxation in the same manner as social security benefits. Because the two statutes are not completely identical, the language of the regulation indicates that the term compensation has the same meaning as the term wages, except as specifically limited by the Railroad Retirement Tax Act.

One commentator suggested that the presumption in § 31.3231(e)–1(a)(2) that payments made to an individual through the employer's payroll are compensation should be deleted. This is based on the removal of this language from the Internal Revenue Code in 1983. The commentator also suggested that § 31.3231(e)–1(a)(4) providing that compensation includes payments for time lost should be deleted. These provisions are included in the existing regulations. The Railroad Retirement Solvency Act of 1983 significantly amended the definition of compensation, changing the inclusion of items to a "paid basis" from an "earned basis" and providing the present two tiered structure. Prior to the 1983 Act, statutory language specifically provided for the presumption and the inclusion of payments for time lost. In amending the definition of compensation, the 1983 Act did not reenact the statutory language. The legislative history does not indicate that Congress intended to exclude payments for time lost from compensation or negate the presumption that payments made through an employer's payroll are compensation. Therefore, these suggestions were not adopted.

A suggestion was also made to delete the reference to "earned" in proposed § 31.3231(e)–1(a)(3). Because section 3231 was amended to shift the focus from when compensation was earned to when compensation was paid, this suggestion has been adopted.

Finally, one commentator suggested adding a reference that compensation does not include supplemental unemployment compensation benefits (SUB-pay). There is no specific statutory

exception from compensation for SUB-pay. Rather, a series of revenue rulings provides a limited exception from the definition of wages for purposes of FICA and FUTA for certain payments made upon an employee's involuntary separation from the employer's service, but only if the payments are designed to supplement the receipt of unemployment compensation. Rev. Rul. 56–249, 1956–1 C.B. 488, the first of many rulings in this area, summarized eight features of a SUB-pay plan whose payments qualified for exclusion from wage treatment. Rev. Rul. 90–72, 1990–2 C.B. 211, specifically provides that because the definition of compensation for RRTA purposes is similar to the definition of wages for FICA purposes, the same conclusions with respect to SUB-pay plans applies to RRTA. Rev. Rul. 90–72 revoked in part an earlier revenue ruling which held that SUB-pay does not have to be tied to state unemployment benefits in order to be excluded from treatment as wages. Because payments from a SUB-pay plan are not automatically excluded from the definition of compensation this suggestion was not adopted.

Special Analyses

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

Drafting Information

The principal author of these regulations is Jean Whalen Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3121(a)–1 is amended as follows:

1. Paragraph (a) is redesignated as (a)(1).

2. Paragraph (a)(2) is added to read as follows:

§ 31.3121(a)–1 Wages.

(a) * * *

(2) The term *compensation* as used in section 3231(e) of the Internal Revenue Code has the same meaning as the term *wages* as used in this section, determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

* * * * *

Par. 3. Sections 31.3201–1 and 31.3201–2 are revised to read as follows:

§ 31.3201–1 Measure of employee tax.

The employee tax is measured by the amount of compensation received for services rendered as an employee. For provisions relating to compensation, see § 31.3231(e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraphs (b)(1) and (2) of § 31.3231(e)–1.

§ 31.3201–2 Rates and computation of employee tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employee tax rate equals the sum of the tax rates in effect under section 3101(a) relating to old-age, survivors, and disability insurance, and section 3101(b), relating to hospital insurance. The Tier 1 employee tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. A received compensation of $60,000 in 1992. The section 3101(a) rate of 6.2 percent would be applied to *A*'s compensation up to $55,500, the applicable contribution base for 1992. The section 3101(b) rate of 1.45 percent would be applied to the entire $60,000 of *A*'s compensation because the applicable contribution base for 1992 is $130,200.

(2)(i) *Tier 2 tax.* The Tier 2 employee tax rate equals the percentage set forth in section 3201(b) of the Code. This rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. A received compensation of $60,000 in 1992. The section 3201(b) rate of 4.90 percent would be applied to *A*'s compensation up to $41,400, the applicable contribution base for 1992.

(b)(1) *Computation.* The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect when the compensation is received by the employee. For rules relating to the time of receipt, see § 31.3121(a)–2 (a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, employee *A* received compensation of $1,000 as remuneration for services performed for employer *B* in 1989. The employee tax is payable at the rate of 12.55 percent (7.65 percent plus 4.90 percent) in effect for 1990 (the year the compensation was received), and not the 12.41 percent rate (7.51 percent plus 4.90 percent) in effect for 1989 (the year the services were performed).

Par. 4. Section 31.3202–1 is amended by revising paragraphs (b) and (f) to read as follows:

§ 31.3202–1 Collection of, and liability for, employee tax.

* * * * *

(b) *Collection; payments by two or more employers in excess of annual compensation limitation.* For rules relating to payments by two or more employers in excess of the annual compensation limitation see § 31.3121(a)(1)–1.

* * * * *

(f) *Concurrent employment.* If two or more related corporations who are rail

employers concurrently employ the same individual and compensate that individual through a common paymaster, which is one of the related corporations employing the individual, see § 31.3121(s)–1.

Par. 5. Sections 31.3211–1 and 31.3211–2 are revised to read as follows:

§ 31.3211–1 Measure of employee representative tax.

The employee representative tax is measured by the amount of compensation received for services rendered as an employee representative. For provisions relating to compensation, see § 31.3231(e)–1.

§ 31.3211–2 Rates and computation of employee representative tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employee representative tax rate equals the sum of the tax rates in effect under sections 3101(a) and 3111(a), relating to the employee and the employer tax for old-age, survivors, and disability insurance, and sections 3101(b) and 3111(b), relating to the employee and the employer tax for hospital insurance. The Tier 1 employee representative tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act, and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. B, an employee representative received compensation of $60,000 in 1992. The sections 3101(a) and 3111(a) rates of 12.4 percent (6.2 percent plus 6.2 percent) would be applied to *B*'s compensation up to $55,500, the applicable contribution base for 1992. The sections 3101(b) and 3111(b) rates of 2.9 percent (1.45 percent plus 1.45 percent) would be applied to the entire $60,000 of *B*'s compensation because the applicable contribution base for 1992 is $130,200.

(2) (i) *Tier 2 tax.* The Tier 2 employee representative tax rate equals the percentage set forth in section 3211(a)(2) of the Code. This rate is applied up to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. B received compensation of $60,000 in 1992. The section 3211(a)(2) rate of 14.75 percent would be applied to *B*'s compensation up to $41,400, the applicable contribution base for 1992.

(3) *Supplemental Annuity Tax.* The supplemental annuity tax for each work-hour for which compensation is paid to an employee representative for services rendered as an employee representative is imposed at the same rate as the excise tax imposed on every employer under section 3221(c). See also § 31.3211–3.

(b) (1) *Computation.* The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect when the compensation is received by the employee representative. For rules relating to the time of receipt, see § 31.3121(a)–2 (a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, employee representative *B* received $1,000 as remuneration for services performed for employer *R* in 1989. The employee representative tax is payable at the rate of 30.05 percent (15.30 percent plus 14.75 percent) in effect for 1990 (the year the compensation was received), and not the 29.77 percent rate (15.02 percent plus 14.75 percent) in effect for 1989 (the year the services were performed).

(c) (1) *Rule where compensation is received both as an employee representative and employee.* The following rule applies to an individual who renders service both as an employee representative and as an employee. The employee representative tax is imposed on compensation received as an employee representative under the rules described in § 31.3211–2. The employee tax is imposed on compensation received as an employee under the rules described in § 31.3201–2. However, if the total compensation received is greater than the applicable contribution base, the employee representative tax is imposed on the amount equal to the contribution base less the amount received for services rendered as an employee.

(2) *Example.* The rule in paragraph (c)(1) of this section is illustrated by the following example.

Example. C performed services both as an employee and an employee representative in 1992. *C* received compensation of $40,000 as an employee and $20,000 as an employee representative. *C*'s entire compensation of $40,000 is subject to tax under the rules described in § 31.3201–2. The amount of employee representative compensation subject to the section 3101(a) and the section 3111(a) rate is $15,500 ($55,500 – $40,000). The entire $20,000 is subject to the sections 3101(b) and 3111(b) rates since the combined compensation is less than $130,200, the applicable contribution base for 1992. The amount of the employee representative compensation subject to the section 3211(a)(2) rate is $1,400 ($41,400 – $40,000).

Par. 6. Section 31.3221–1 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. Paragraph (d) is removed.
3. The revisions read as follows:

§ 31.3221–1 Measure of employer tax.

(a) *General Rule*—The employer tax is measured by the amount of compensation paid by an employer to its employees. For provisions relating to compensation, see § 31.3231(e)-1. For provisions relating to the circumstances under which certain compensation is to be disregarded for purposes of determining the employer tax, see paragraphs (b) (1) and (2) of § 31.3231(e)–1.

(b) *Payments by two or more employers in excess of annual compensation limitation.* For rules relating to payments by two or more employers in excess of the annual compensation limitation, see § 31.3121(a)(1)–1.

* * * * *

Par. 7. Section 31.3221–2 is revised to read as follows:

§ 31.3221–2 Rates and computation of employer tax.

(a) *Rates*—(1)(i) *Tier 1 tax.* The Tier 1 employer tax rate equals the sum of the tax rates in effect under section 3111(a) relating to old-age, survivors, and disability insurance, and section 3111(b) relating to hospital insurance. The Tier 1 employer tax rate is applied to compensation up to the contribution base described in section 3231(e)(2)(B)(i). The contribution base is determined under section 230 of the Social Security Act and is identical to the old-age, survivors, and disability insurance wage base and the hospital insurance wage base, respectively, under the Federal Insurance Contributions Act.

(ii) *Example.* The rule in paragraph (a)(1)(i) of this section is illustrated by the following example.

Example. R's employee, *A*, received compensation of $60,000 in 1992. The section 3111(a) rate of 6.2 percent would be applied to *A*'s compensation up to $55,500, the applicable contribution base for 1992. The section 3111(b) rate of 1.45 percent would be applied to the entire $60,000 of *A*'s compensation because the applicable contribution base for 1992 is $130,200.

(2)(i) *Tier 2 tax.* The Tier 2 employer tax rate equals the percentage set forth in section 3221(b) of the Internal Revenue Code. This rate is applied up

to the contribution base described in section 3231(e)(2)(B)(ii).

(ii) *Example.* The rule in paragraph (a)(2)(i) of this section is illustrated by the following example.

Example. *R*'s employee, *A*, received compensation of $60,000 in 1992. The section 3221(b) rate of 16.10 percent would be applied to *A*'s compensation up to $41,400, the applicable contribution base for 1992.

(3) *Supplemental Annuity Tax.* The supplemental annuity tax for each work-hour for which compensation is paid by an employer for services rendered during any calendar quarter by employees is imposed at the tax rate determined each calendar quarter by the Railroad Retirement Board. See also § 31.3221–3.

(b)(1) *Computation.* The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section. The applicable rate is the rate in effect at the time the compensation is paid. For rules relating to the time of payment, see § 31.3121(a)–2(a) and (b).

(2) *Example.* The rule in paragraph (b)(1) of this section is illustrated by the following example.

Example. In 1990, *R*'s employee *A* received $1,000 as remuneration for services performed for *R* in 1989. The employer tax is payable at the rate of 23.75 percent (7.65 percent plus 16.10 percent) in effect for 1990 (the year the compensation was received) and not the 23.61 percent rate (7.51 percent plus 16.10 percent) in effect for 1989 (the year the services were performed).

Par. 8. Section 31.3231(a)–1 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraphs (c) and (d) are redesignated as (d) and (e).
3. Paragraphs (c) and (f) are added.
4. The revisions and additions read as follows:

§ 31.3231(a)–1 Who are employers.

(a) * * *

(1) Any carrier, that is, any express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49;

* * * * *

(c) As used in paragraph (a)(2) of this section, the term *casual* applies when the service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is so irregular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial.

* * * * *

(f) Any company that is described in paragraph (a)(2) of this section is an employer under section 3231. In certain cases, based on all the facts and circumstances, it may be appropriate to segregate those businesses engaged in rail services and therefore subject to the Railroad Retirement Tax Act from those businesses engaged exclusively in nonrail services and therefore not subject to the Railroad Retirement Tax Act. The factors considered are set forth in guidance published by the Internal Revenue Service.

Par. 9. Section 31.3231(e)–1 is revised to read as follows:

§ 31.3231(e)–1 Compensation.

(a) *Definition*—(1) The term *compensation* has the same meaning as the term *wages* in section 3121(a), determined without regard to section 3121(b)(9), except as specifically limited by the Railroad Retirement Tax Act (chapter 22 of the Internal Revenue Code) or regulation. The Commissioner may provide any additional guidance that may be necessary or appropriate in applying the definitions of sections 3121(a) and 3231(e).

(2) A payment made by an employer to an individual through the employer's payroll is presumed, in the absence of evidence to the contrary, to be compensation for services rendered as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's payroll is presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such. For rules regarding the treatment of deductions by an employer from remuneration of an employee, see § 31.3123–1.

(3) The term *compensation* is not confined to amounts paid for active service, but includes amounts paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

(4) Compensation includes amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation as well as pay for time lost.

(5) For rules regarding the treatment of reimbursement and other expense allowance amounts, see § 31.3121(a)–3. For rules regarding the inclusion of fringe benefits in compensation, see § 31.3121(a)–1T.

(b) *Special Rules.* (1) If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $25, the amount is disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221.

(2) Compensation for service as a delegate to a national or international convention of a railway-labor-organization employer is disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221 if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service for purposes of the Railroad Retirement Act.

(3) For special provisions relating to the compensation of certain general chairs or assistant general chairs of a general committee of a railway-labor-organization employer, see paragraph (c)(3) of § 31.3231(b)–1.

Par. 10. Section 31.3231(e)–2 is added to read as follows:

§ 31.3231(e)–2 Contribution base.

The term compensation does not include any remuneration paid during any calendar year by an employer to an employee for services rendered in excess of the applicable contribution base. For rules applying this provision, see § 31.3121(a)(1)–1

§§ 31.3231(e)–2T and 31.3231(e)–3 [Removed]

Par. 11. Sections 31.3231(e)–2T and 31.3231(e)–3 are [Removed]

Margaret Milner Richardson,

Commissioner of Internal Revenue

Approved November 28, 1994

Leslie Samuels,

Assistant Secretary of the Treasury

[FR Doc 94–31426 Filed 12–22–94, 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 301

[TD 8583]

RIN 1545–AM66

Agreements for Payment of Tax Liabilities in Installments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding agreements for the payment of federal tax liabilities in installments under section 6159 of the Internal Revenue Code of 1986. These regulations reflect changes to the law made by section 6234 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. 100–647, 102 Stat. 3573), which authorizes the use of written installment agreements if the Secretary determines that an installment agreement will facilitate collection of federal tax liabilities. These regulations affect persons who wish to enter into agreements to pay their tax liability in installments.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin Connelly, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1993, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 63541). No public hearing was requested or held.

Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

An explanation of the regulations is contained in the preamble of the notice of proposed rulemaking, published in the **Federal Register** (56 FR 63541) on December 2, 1993. The following is an explanation of the comments that were received and the revisions that were made in response to the comments.

The proposed regulations authorize the IRS to alter, modify, or terminate an installment agreement if a district director, a director of a service center, or a director of a compliance center (the director) determines that the financial condition of the taxpayer has significantly improved. Two commenters have suggested amending this provision to also authorize the IRS to alter or modify an agreement if the taxpayer's financial condition has deteriorated.

The provision in the proposed regulations is intended to prohibit the IRS from amending or terminating an installment agreement unilaterally if a taxpayer's financial condition has deteriorated as long as the taxpayer continues to make timely payments. In order to preserve this prohibition and at the same time respond to the commenters' concern, a new provision has been added to the final regulations which allows the director, upon request by a taxpayer, to amend or terminate an installment agreement because of a deterioration (or other change) in the taxpayer's financial condition.

The proposed regulations require the IRS to give notice at least 30 days prior to altering, modifying, or terminating an installment agreement. One commenter has suggested that the IRS also should be required to give the taxpayer a 30-day written notification of any intent to deny an agreement and the opportunity to appeal. The Internal Revenue Code does not require the IRS to give 30 days notice of its intent to deny an installment agreement. Such a notice requirement would enable taxpayers to stop collection actions for 30 days simply by requesting an installment agreement. For these reasons, the commenters' suggestion has not been adopted.

The proposed regulations provide that a written installment agreement may take the form of a document signed by the taxpayer and the director or a written confirmation of a verbal agreement entered into by the taxpayer and the IRS. A commenter has suggested that written installment agreements should be allowed only on standardized forms such as Forms 433–D or 9465, because agreements other than those on standardized forms may cause confusion or abuse.

The IRS enters into two types of installment agreements. Written agreements on Forms 433–D, 433–G, and 2159, which are negotiated face-to-face, are generally based on an exhaustive, written financial statement, and are signed by both the taxpayer and an employee of the IRS who has "examined or approved" the agreement. Other agreements are entered into by the Automated Collection System (ACS), the Service Center Collection Branch (SCCB), or Taxpayer Services (TS) either over the telephone or in response to a letter from a taxpayer. The agreements entered into by ACS, SCCB, or TS, which are neither negotiated face-to-face nor based on an in-depth examination of the taxpayer's financial condition, are confirmed in a letter from the IRS. The confirmation letter is signed by the IRS but not by the taxpayer.

A provision requiring all written installment agreements to be on standardized forms signed by both parties would severely hamper the ability of ACS, SCCB, and TS to enter into installment agreements. The ACS, SCCB, and TS are bulk processing centers where installment agreements generally are entered into on the basis of a single contact with the taxpayer. If installment agreements entered into by ACS, SCCB, or TS had to be on standardized forms signed by both the IRS and the taxpayer, finalization of each agreement would have to be monitored by the ACS, SCCB, or TS contact employee, or by some other employee. Once an agreement were made, a confirmation letter would have to be forwarded to the taxpayer for signature. If the confirmation letter were not returned in a timely manner, the employee would have to send a follow-up letter. Once a signed letter were returned, the employee would have to associate the letter with the taxpayer's file, fill out proper paperwork, and perhaps send a final follow-up letter to the taxpayer. This would defeat the very purpose of bulk processing.

Although the agreements entered into by ACS, SCCB, and TS are not on Forms 433–D, 433–G, or 9465, the confirmation letters sent by ACS, SCCB, and TS are based on model letters drafted by the IRS for the purpose of setting forth what is expected of the taxpayer. These letters, which set forth the terms of payment and the conditions on which the agreement is based, contain essentially the same information as the installment agreement forms. Therefore, there should be little or no confusion caused by the confirmation letters.

Although a provision requiring all installment agreements to be on standardized forms has not been adopted, the final regulations have been amended to allow installment agreements to take the form of a written confirmation of an agreement proposed in writing by the taxpayer and accepted by the IRS, as well as a written confirmation of a verbal agreement entered into between the taxpayer and the IRS.

A commenter has suggested that the proposed regulations be amended to make it clear that the IRS must give a 30-day notice of an intent to alter, modify, or terminate an agreement in all cases except where collection of the liability to which the installment agreement applies is in jeopardy. This suggestion has been adopted.

It also has been suggested that the regulations should state explicitly that

during the 30-day period the taxpayer may cure a default, correct inaccurate information, or provide additional information which will generally allow continuation of the original agreement. However, the reason for requiring written notification of an intent to alter, modify, or terminate an agreement is to give taxpayers the opportunity to show that the IRS has made a mistake. For example, if the IRS intends to terminate an agreement because it believes the taxpayer has given the IRS incorrect or incomplete information, the taxpayer will have thirty days to prove to the IRS that the taxpayer's information was correct and complete. The reason for the notification is not to allow the taxpayer to cure a default by correcting inaccurate information that the taxpayer gave the IRS during negotiations for an installment agreement. The regulations have been amended to provide that upon receiving notification that the IRS intends to alter, modify, or terminate an agreement the taxpayer may provide information to show that the IRS has made a mistake.

Special Analyses

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

Drafting Information

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

List of Subjects in 26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6159–1 is added under the undesignated center heading "Place and Due Date for Payment of Tax" to read as follows:

§ 301.6159–1 Agreements for payment of tax liability in installments.

(a) *Authority and definition.* A district director, a director of a service center, or a director of a compliance center (the director) is authorized to enter into a written agreement with a taxpayer that allows the taxpayer to satisfy a tax liability by making scheduled periodic payments until the liability is fully paid if the director determines that such an installment agreement will facilitate the collection of the tax liability.

(b) *Acceptance, form, and term of installment agreement*—(1) (i) *Acceptance or rejection of installment agreement.* The director has the discretion to accept or reject any proposed installment agreement. As a condition to entering into an installment agreement with a taxpayer, the director may require that—

(A) The taxpayer agree to a reasonable extension of the period of limitations on collection; and

(B) The agreement contain terms and conditions that protect the interests of the government.

(ii) *Example.* The director may require that a taxpayer authorize direct debit bank transfers as the method of making installment payments under the agreement.

(2) *Form of installment agreement.* A written installment agreement may take the form of a document signed by the taxpayer and the director or a written confirmation of an agreement entered into by the taxpayer and the director that is mailed or personally delivered to the taxpayer.

(3) *Term of accepted installment agreement.* Except as otherwise provided in this section, an installment agreement is effective from the day the director signs the agreement to the day the agreement ends by its terms.

(c) *Alteration, modification, or termination of installment agreements by the Internal Revenue Service*—(1) *Inadequate information or jeopardy* The director may terminate an installment agreement if—

(i) The director determines that the taxpayer or the taxpayer's representative has provided to the Internal Revenue Service information that is inaccurate or incomplete in any material respect in connection with the granting of the installment agreement; or

(ii) The director determines that collection of any tax liability to which the installment agreement applies is in jeopardy.

(2) *Subsequent change in financial condition, failure to timely pay an installment or another Federal tax liability, or failure to provide requested financial information.* The director may alter, modify, or terminate the terms of an installment agreement if—

(i) The director determines that the financial condition of a taxpayer that is a party to the installment agreement has significantly improved; or

(ii) The taxpayer that is a party to the installment agreement fails—

(A) To timely pay any installment in accordance with the terms of the installment agreement;

(B) To pay any other Federal tax liability when the liability becomes due; or

(C) To provide updated financial information requested by the director.

(3) *Request by taxpayer.* Upon request by a taxpayer that is a party to the installment agreement, the director may alter, modify, or terminate the terms of an installment agreement if the director determines that the financial condition of the taxpayer has significantly changed.

(4) *Notice.* Unless the director determines that collection of the tax is in jeopardy, the director will notify the taxpayer in writing at least 30 days before altering, modifying, or terminating an installment agreement pursuant to paragraph (c)(1) or (2) of this section. A notice provided pursuant to this paragraph must briefly describe the reason for the intended alteration, modification, or termination. Upon receiving notice, the taxpayer may provide information showing that the reason for the intended alteration, modification, or termination is incorrect.

(d) *Actions by the Internal Revenue Service during the term of the installment agreement.* Except as otherwise provided by the installment agreement, during the term of the agreement the director may take actions to protect the interests of the government with regard to the unpaid balance of the tax liability to which the installment agreement applies (other than actions pursuant to subchapter D of chapter 64 of subtitle F of the Internal Revenue Code against a person that is a party to the agreement), including any actions enumerated in the agreement. The actions include, for example—

(1) Requesting updated financial information from any party to the agreement;

(2) Conducting further investigations (including the issuance and enforcement of summonses) in connection with the tax liability to which the installment agreement applies;

(3) Filing or refiling notices of federal tax lien; and

(4) Taking collection action against any person who is not a party to the agreement but who is liable for the tax to which the agreement applies.

(e) *Termination.* If an installment agreement is terminated by the director, the director may pursue collection of the unpaid balance of the tax liability.

(f) *Cross-reference.* Pursuant to section 6601(b)(1), the last day prescribed for payment is determined without regard to any installment agreement, including for purposes of computing penalties and interest provided by the Internal Revenue Code.

(g) *Effective date.* This section is effective December 23, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 28, 1994.

Leslie Samuels,

Assistant Secretary of Treasury.

[FR Doc. 94–31425 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of extension to timetable for enactment of required program amendments.

SUMMARY: OSM is announcing the Director's decision to extend time frames for the State of Wyoming to enact required program amendments to its permanent regulatory program (hereinafter referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act. OSM did not approve Wyoming's previously proposed amendment to revise and add rules and statutes pertaining to definitions and revegetation success standards in the January 24, 1994, **Federal Register** (59 FR 3521). In that decision OSM required Wyoming to submit proposed program amendments to these statutes and rules by March 25, 1994.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

II. Submission of Extension Request

By letter dated February 28, 1994, Wyoming submitted, consistent with the requirements at 30 CFR 732.17(f)(1), a description of a proposed amendment and a timetable for its enactment. The proposed timetable in the submission provided that Wyoming would have until the end of calendar year 1994 to complete the enactment of the proposed amendment (Administrative Record No. WY–26–1). In the letter, Wyoming notified OSM that the unusually lengthy timetable was needed to complete rulemaking regarding the required State program amendments at 30 CFR 950.16 (bb) through (gg). Since its February 28 submission of the proposed amendment and timetable for its enactment, Wyoming has been successful in drafting and receiving legislature approval of the required statutory changes as described at 30 CFR 950.16 (bb), (cc), (dd), (ee), and (ff). The statutory changes were signed by the Governor and filed with the Secretary of State on March 16, 1994. Wyoming, in its February 28 letter, asserts that it has been in "negotiated rule making" with all interested parties, including representatives from State, coal industry, and environmental groups, regarding the rule (non-statutory) portions of the required amendments that address specific shrub density standards for reclamation. Wyoming asserts that the "negotiated rule making" process, and the subsequent formal rulemaking process, are the reasons for the lengthy timetable in this submission.

OSM published a notice, in the March 21, 1994, **Federal Register** (59 FR 13286), announcing receipt of the Wyoming's February 28, 1994, letter and in the same notice requested public comment as to whether the proposed timetable should be approved. The public comment period closed on April 20, 1994.

By letter dated September 1, 1994, (Administrative Record No. WY–26–7), Wyoming submitted a request for additional time to complete rulemaking regarding the required State program amendments. This request would delay the resubmittal date of March 25, 1994, until November 1995. Wyoming informed OSM that, since the time of the initial submission, its Attorney General's Office had identified conflicts between the proposed statutes and "negotiated" rules and existing statutes and rules. This conflict, asserted Wyoming, had prohibited the State from proceeding with its formal rulemaking. Wyoming further asserted that statute changes that would eliminate the conflicts and allow Wyoming to proceed with formal rulemaking are currently being considered by the Wyoming Mining and Mineral Legislative committee. The statute changes cannot be considered by the entire Wyoming legislature, asserted Wyoming, until the State of Wyoming's next legislative session beginning in January 1995. The formal rulemaking, asserted Wyoming, could only proceed after successful legislative action and the Governor's approval of the statute changes.

OSM published a notice in the September 20, 1994, **Federal Register** (50 FR 48192), announcing receipt of the timetable extension request and in the same notice reopened the public comment period requesting written comments on the proposed request. The public comment period closed on October 5, 1994.

III. Director's Findings

Set forth below, pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201–1328 (SMCRA) and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed timetable for enactment submitted on February 28, 1994, and the subsequent request to extend that timetable submitted on September 1, 1994.

By letter submitted February 28, 1994, Wyoming proposed a timetable for enactment of required program amendments at 30 CFR 950.16 (bb) through (gg). That timetable extended until the end of calendar year 1994. The length of the timetable, according to Wyoming, resulted from a time consuming "negotiated rulemaking"

that the State was conducting in cooperation with State, coal industry, and environmental groups.

By its letter dated September 1, 1994, Wyoming requested an extension to the timetable for enactment of the required program amendments at 30 CFR 950.16 (bb) through (gg). The extension, asserted Wyoming, was needed to allow the State Legislature time to change existing statutes that conflicted with the proposed rules resulting from Wyoming's "negotiated rulemaking" effort with State, coal industry, and environmental groups. Wyoming informed OSM that, at the conclusion of the legislative session, the formal rulemaking process would proceed and that Wyoming expected to enact the 1994 statute changes, the revised rules, and any additional changes to the statutes that might be required to satisfy OSM's required program amendments at 30 CFR 950.16 (bb) through (gg). Wyoming informed OSM that the "negotiated rulemaking" with State, coal industry, and environmental groups referred to in its February 28, 1994, letter had been completed and that the extension to its original timetable was needed to implement the results of that rulemaking.

The required amendments concern Wyoming Statute (W.S.) 35–11–103(e)(xxviii) definition of "Agricultural lands"; W.S. 35–11–103(e)(xxix) definition of "Critical habitat"; W.S. 35–11–103(e)(xxx) definition of "Important habitat or critical habitat"; W.S. 35–11–402(b) provisions that direct Wyoming to use specific statutory definitions; W.S. 35–11–402(c) grazingland reclamation success standards; and the Department of Environmental Quality—Land Quality Division (DEQ/LQD) Rules at Chapter IV, Section 2(d)(x)(E) and Appendix A, pertaining to revegetation success standards for shrubs, as discussed in detail in the January 24, 1994, **Federal Register** (59 FR 3521).

OSM Directive REG–5 (Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications) provides several factors to be considered in reviewing a proposed timetable for enactment of a required amendment or a subsequent proposed change to a timetable for enactment of a required amendment. These factors include: (1) The State's amendment process and constraints imposed by the State administrative and legislative rulemaking requirements, schedules and procedures; (2) the criticality of the amendment and/or portion of the State program to be amended, including any potential impacts on public health and safety or the environment; (3) the suitability of State promulgation of emergency regulations when the need for a program amendment is immediate; (4) the complexity of the amendment's subject matter and the nature of the change to be made, i.e., does the section of the program being amended "stand alone," or will change (or lack thereof) affect multiple sections of the State's program; (5) State workload factors; and (6) the possibility of combination with other amendments in related subject areas which are already scheduled under an improved timetable for enactment.

Factor 1

Wyoming's rulemaking process is quite complex and time consuming. In addition, Wyoming's administrative and legislative rulemaking requirements, schedules, and procedures are quite constraining. In Wyoming, the following steps are required for promulgation of a rule change:

(1) DEQ prepares draft rule;

(2) DEQ presents draft rule to an Advisory Board;

(3) DEQ modifies draft rule if required by the Advisory Board;

(4) DEQ requests concurrence from the Governor and Attorney General (AG) to proceed with adoption of draft rule;

(5) DEQ receive concurrence from Governor and AG;

(6) DEQ modifies draft rule if required by Governor and/or the AG;

(7) DEQ sends copies of draft rule to the Environmental Quality Council (EQC) with request for a hearing;

(8) Public notice of the hearing is published and a 45 day comment period on the draft rule occurs before EQC hearing;

(9) Comments on draft rule are analyzed by DEQ and DEQ modifies draft rule, if needed;

(10) EQC conducts hearing and decides to reject, adopt or modify draft rule;

(11) The Land Quality Division (LQD) submits EQC's decision to the AG and Legislative Service Office (LSO) within 10 days following announcement of decision of EQC;

(12) Within 30 days of decision, EQC issues a statement of reasons for overruling any public comment objections, if applicable;

(13) AG, with LSO concurrence, submits draft rule to Governor for approval; and,

(14) If Governor approves draft rule, the draft rule is forwarded to the Secretary of State's Office, within 60 days of approval, for filing.

In this instance, Wyoming asserts that the State rulemaking process has been stalled after the AG's office determination that the proposed, negotiated rules are in conflict with existing Wyoming Statute (W.S.) 35–11–402 (b) and (c). These statutes address consultation and approval requirements by State wildlife agencies. Wyoming State law prohibits Wyoming from promulgating rules that are in direct conflict with existing statutes. Thus, Wyoming's rulemaking process cannot proceed until the statutes are changed in the next legislative session. This would extend the timetable for the enactment of this amendment package to as late as November 1995, according to Wyoming.

Factor 2

The proposed amendment does not appear to present a potential impact to public health and safety. However, the proposed amendment does impact the environment because it concerns a revegetation success standard that is part of Wyoming's existing approved program and that has been determined to be less effective than the Federal program requirements. The State has already repealed portions of the statutes, negotiated proposed rules, and drafted statutory changes to resolve conflicts between those statutes and rules and the existing statutes. Thus, it is apparent that the State has determined these required amendments to be critical and is correcting them as expeditiously as possible.

Factor 3

The proposed amendment does not qualify as an emergency and it does not present potential impacts to public health and safety.

Factor 4

The complexity of the shrub reclamation amendment is evident by the divergent professional opinions regarding the appropriate minimum stocking rate and planting arrangements. The proposed change will affect multiple sections of the State's program concerning reclamation requirements.

Factor 5

The State has not shown that workload is a factor in considering this proposed extension.

Factor 6

The required program amendments at 30 CFR 950.16 (bb) through (ff) appear to have been addressed in the last Wyoming legislative session. The remaining required program amendment at 30 CFR 950.16(gg) is in "negotiated rulemaking," which will be followed by formal rulemaking and promulgation. Wyoming has requested that 30 CFR 950.16 (bb) through (gg) be submitted in one amendment package due to relationship of the subject matter. OSM agrees with the State on this approach.

Based on review of the above factors, the Director is approving Wyoming's February 28, 1994, proposed timetable for enactment, as revised by Wyoming's September 1, 1994, request for extension of that timetable. The timetable, as

revised, will allow Wyoming to enact the required program amendments specified at 30 CFR 950.16 (bb) through (gg). The timetable, as revised, extends through November 30, 1995. OSM has determined that this timetable will provide Wyoming the necessary time to allow for required legislative changes and public participation in their formal rulemaking process. OSM will monitor Wyoming's progress. Should the process break down and prohibit Wyoming from proceeding with the promulgation of the required program amendments within the time frame proposed in this rulemaking action. OSM will take immediate and appropriate action.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments on the initial proposed timetable and the request to extend the proposed timetable. Written comments were received during both comment periods from the National Wildlife Federation (NWF), the Wyoming Wildlife Federation (WWF), and the Wyoming Outdoor Council (WOC) in letters dated April 19, 1994, and October 4, 1994, (Administrative Records Nos. WY–26–03 and WY–26–09). In both letters, the commenters collectively expressed concerns that the proposed extension is in violation of the regulations implementing SMCRA, questioned the 60-day time frame for renegotiating "minor changes to the proposed shrub density rule in response to the adopted legislation," and had concern with the unexplained additional 60–90 days to submit the proposed rules to OSM after the Environmental Quality Council's approval.

In the January 24, 1994, **Federal Register**, OSM did not approve a previously submitted proposed amendment from Wyoming and codified required program amendments at 30 CFR 950.16 (bb) through (gg) that were all inclusive to the proposed amendment. In accordance with 30 CFR 732.17(f)(1), the State had 60 days after notification to submit a written amendment or a description of an amendment along with a timetable for enactment. Therefore, the State's response was required by March 24, 1994. The State submitted a letter on February 28, 1994, which, by reference to an earlier, informal submittal of February 4, 1994, included a description of a proposed amendment. In addition, the February 28, 1994, letter included a proposed timetable for enactment of the proposed amendment. The proposed timetable extended through the end of calendar year 1994. In the February 28, 1994, letter, Wyoming discussed the then current "negotiated rulemaking" and the 1994 legislative action previously discussed as the reason for the unusually lengthy proposed timetable.

Thus, although characterized by the State and OSM as a "request for extension of time," Wyoming's February 28, 1994, letter, was, in fact, a description of a proposed amendment and a timetable for its enactment, submitted within the 60 day deadline at 30 CFR 732.17(f)(1).

The commenters asserted that OSM violated 30 CFR 732.17(h)(8) by allowing 60 days to submit new amendments. The Federal regulation at 30 CFR 732.17(h)(8) allows a State regulatory authority (RA) to resubmit a revised amendment within 30 days after publication of the disapproval.

As stated above, OSM did not approve the proposed amendment and required additional amendments, pursuant to the process at 30 CFR 732.17(f)(1), to remedy existing deficiencies in the Wyoming program discovered during that review. As discussed above, Wyoming complied with OSM's required amendment by submitting a description of an amendment and a timetable for its enactment within 60 days. Thus, neither OSM nor Wyoming acted inappropriately in this instance.

In stating that OSM should have given Wyoming only 30 days, rather than 60 days, in which to respond to OSM's required amendment, the commenters appear to confuse the purpose of 30 CFR 732.17(f), which allows OSM to require changes in State programs, with the purpose of 30 CFR 732.17(h)(8), which allows a State, on its own initiative, once a proposed amendment is disapproved, to submit a revised version to OSM for reconsideration. The 30 day time limit applies to voluntary submissions of revised versions of disapproved amendments under 30 CFR 732.17(h)(8). The 60 day time limit applies to mandatory submissions for changes to a State program under 30 CFR 732.17(f). Since Wyoming's February 28, 1994, submission was a response to an OSM required change to Wyoming's program, rather than a voluntary submission of a revised version of disapproved amendment, OSM applied the correct time limit in when it allowed 60 days for Wyoming to respond to the required amendment. For additional information on the purposes of 30 CFR 732.17(f) and 30 CFR 732.17(h)(8), please see the June 17, 1982, **Federal Register** (47 FR 26356, 26360–1) and the January 23, 1981, **Federal Register** (46 FR 7906).

The commenters also asserted that OSM has failed to enforce 30 CFR 732.17(f)(2) and that 30 CFR 733 proceedings (substitution Federal enforcement of a State program) should be instituted. The Federal regulations at 30 CFR 732.17(f)(2) require that if a State RA does not submit a proposed amendment or a description of an amendment along with a timetable for enactment within 60 days from receipt of notice by the Director, or does not comply with the submitted schedule, then the Director shall begin proceedings under 30 CFR part 733.

As discussed above, Wyoming's February 28, 1994, letter, which included a description of an amendment with a timetable for its enactment, satisfied the requirement at 30 CFR 732.17(f)(1), that a proposed amendment or description of amendment and timetable for enactment, be submitted within 60 days of notification of the required changes in the State program. Having met the deadline at 30 CFR 732.17(f)(1), it would be inappropriate for OSM to institute 30 CFR part 733 proceedings against Wyoming at this time.

In addition, as discussed in detail in the commenters' letter, Wyoming has gone through a negotiated rulemaking process once before which was submitted to OSM for review as a formal amendment. At the same time, legislative action created statutes that conflicted with the negotiated rules. Consequently, OSM did not approve the rules and the statutes and required the State to amend its program. It is apparent, based upon the history described by the commenters, that the State has been working on correcting this deficient portion of the program and that 30 CFR part 733 proceedings would not be appropriate while the State is working on correcting the deficiency.

Because of the 1994 legislative repeal of those portions of the conflicting statutes and results of the "negotiated rulemaking," it would appear that the State is in a position to submit an amendment that will correct this portion of its program. The proposed statute changes for the 1995 legislative session should resolve the most recently discovered statutory conflicts and thus allow completion of the formal rulemaking process. OSM believes that this is the appropriate process to assure that the deficiency identified in the required amendment is adequately remedied.

The commenters pointed out that specific portions of Wyoming's

timetable, as revised on September 1, 1994, are quite lengthy. The commenters assert that they are concerned with the 60 days the timetable allows for "minor changes to the proposed shrub density rule in response to the adopted legislation" from April through May 1995, as well as the 90 days the timetable allows, after the Environmental Quality Council (EQC) approval of the proposed rules, but before submission of the amendment package to OSM, from September through November 1995. The commenters also mentioned that Wyoming's program includes a provision allowing the EQC to meet in an emergency hearing, which would speed the rulemaking process, but that Wyoming has not pursued this option.

OSM believes the 60 days allotted for dealing with "minor changes" shows acceptable caution on the part of Wyoming. OSM understands that, if the 60 days is not needed, the state will press forward with its formal rulemaking process. Allowing 90 days to submit the negotiated rule to OSM after approval by the EQC reflects Wyoming's administrative processes and procedures. Rules must be filed with the Secretary of State within 60 days after approval by the EQC. The EQC hearings can be held at any time during the month. Therefore, Wyoming's planned September 1995 EQC hearing could take place at the beginning or end of that month. If it takes place at the end of the month, then the 60-day filing deadline may not occur until the end of November 1995. Wyoming is again using acceptable caution in establishing this time frame. Regarding Wyoming's ability to request an emergency EQC hearing, under State law, such a request can only be made in a genuine emergency situation. In other words, only an unplanned or unanticipated event justifies an emergency hearing of the EQC. The current rulemaking, while important, is neither unplanned nor unanticipated. In addition OSM understands that Wyoming is retaining the option to request an emergency EQC hearing if the need arises.

Agency Comments

The Bureau of Land Management responded by determining that the amendment as written will have no effect on BLM operations. (Administrative Record No. WY–26–6)

V. Director's Decision

Based on the above, the Director is approving Wyoming's February 28, 1994, proposed timetable for enactment of a required amendment, as revised by Wyoming's September 1, 1994, request for extension of that timetable. The timetable, as revised, will allow Wyoming to enact the required program amendments specified at 30 CFR 950.16 (bb) through (gg). The timetable, as revised, extends through November 30, 1995.

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 undo delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With Executive Order 12866

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

Compliance With 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 this rule meets the applicable standards of subsection (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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the 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 of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Compliance With the Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface Mining, Underground mining.

Dated: December 19, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

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

PART 950—WYOMING

1. The authority citation for Part 950 continues to read as follows:

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

2. In § 950.16, paragraph (hh) is added to read as follows:

§ 950.16 Required program amendments.

* * * * *

(hh) By letters dated February 28, 1994, and September 1, 1994, Wyoming submitted a description of required amendments, time table for enactment, and request for additional time to complete the rulemaking for paragraphs (aa) through (gg) of this section. The request provides that Wyoming will have through November 30, 1995, to submit those required program amendments.

[FR Doc. 94–31599 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-94-153]

RIN 2115-AA97

Safety Zone; South Street Seaport, New Year's Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the South Street Seaport, New Year's Eve Fireworks display in the East River, New York, on December 31, 1994, to protect the boating public from the hazards associated with fireworks exploding in the area. This event, sponsored by South Street Seaport, Inc., will take place from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. This regulation will temporarily close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan, to Pier 3, Brooklyn. This safety zone will preclude all vessels from transiting this portion of the East River.

EFFECTIVE DATES: This rule is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Planning and Readiness Division Officer, Coast Guard Group New York (212) 668-7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. D. Steib, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On November 8, 1994, the Coast Guard published a noticed of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 55603) concerning this regulatory action. Interested persons were requested to submit comments on or before December 8, 1994. No comments were received. A public hearing was not requested and one was not held. The Captain of the Port, New York, is promulgating this temporary final rule as proposed. Good cause exists for making this rule effective less than 30 days after **Federal Register** publication. Due to the length of the comment period deemed necessary to provide the public with adequate notice, there is insufficient time to publish this rule 30 days before the event. Making this rule effective in less than 30 days after publication is in the public interest as any delay would effectively cause cancellation of the event.

Background and Purpose

South Street Seaport, Inc., submitted an application to hold a fireworks program in the waters of the East River on December 31, 1994. Following the notice and comment period described above, the Captain of the Port, New York, now promulgates this temporary final rule as proposed and establishes a safety zone for the annual event known as the "South Street Seaport New Year's Eve Fireworks", in the waters of the East River.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close a portion of the East River to all vessel traffic between 11:30 p.m. on December 31, 1994, and 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation will prevent traffic from transiting this area, the effect of this regulation will not be significant for several reasons. Due to the limited duration of the event; the minimal traffic expected due to the late hour of the event and winter season; the extensive advance advisories that will be made to the maritime community to allow for the scheduling of transits before and after the event; and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impac of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

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

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

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

Final Regulations

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01-153 is added to read as follows:

§ 165.T01–153 Safety Zone; South Street Seaport, New Year's Eve Fireworks, East River, NY.

(a) *Location.* All waters of the East River, New York, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Coast Guard, Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 15, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–31628 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–160]

RIN 2115–AA97

Safety Zone; First Night Martha's Vineyard Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Vineyard Haven Harbor, Vineyard Haven, MA, on December 31, 1994, during the annual the First Night Martha's Vineyard fireworks display. The zone will be around a barge anchored just outside the Vineyard Haven jetty. This safety zone is necessary to protect pleasure craft and persons aboard these vessels from injury due to potential hazards associated with the fireworks.

EFFECTIVE DATE: This regulation is effective between the hours of 10 p.m. to 10:45 p.m. on December 31, 1994.

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

SUPPLEMENTARY INFORMATION:

Drafting Information

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

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Because of the late date the Coast Guard received the application, there was not sufficient time to publish proposed rules in advance of the event. First Night Martha's Vineyard is a popular local event centered around the New Years national holiday. Delaying the event would result in its cancellation.

Background and Purpose

On December 31, 1994, First Night Martha's Vineyard will sponsor a fireworks display between the hours of 10 p.m. and 10:45 p.m. in celebration of New Years Eve. A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of the barge over which the fireworks will be launched. The safety zone will cover an area within a 400 yard radius of the anchored fireworks barge which will be in position 41°27′36″ North 70°35′48″ West (approximately 300 yards north of the Vineyard Haven jetty) between the hours of 10 p.m. to 10:45 p.m. on December 31, 1994.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period. The entities most likely to be affected are pleasure craft wishing to view the fireworks. These vessels will still be able to view the fireworks but will be required to do so at a distance of more than 400 yards from the anchored barge, which will not cause them undue hardship. The effect on commercial traffic is negligible. There is a minimal amount of commercial traffic that transmits the area. Advisories will be made to allow any such vessels to adjust their schedules.

Small Entities

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

For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–160 is added to read as follows:

§ 165.T01–160 Safety Zone: First Night Vineyard Haven Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters within a 400 yard radius of the anchored fireworks barge which will be in approximate position 41° 27′ 36″ North 70° 35′ 48″ West (approximately 300 yards north of the Vineyard Haven jetty).

(b) *Effective date.* This section becomes effective at 10 p.m. on December 31, 1994. It terminates at 10:45 p.m. on December 31, 1994, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: December 13, 1994.

P.A. Turlo,

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

[FR Doc. 94–31627 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5127–6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final Authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act. The Environmental Protection Agency (EPA) reviewed Louisiana's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This Final Authorization for Louisiana shall be effective March 8, 1995, unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this Immediate Final Rule. All comments on Louisiana's program revision application must be received by the close of business February 6, 1995.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H. B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765–0617 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665–6444. Written comments, referring to Docket Number LA–95–2, should be sent to Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR 124, 260–268, and 270.

B. Louisiana

Louisiana initially received Final Authorization, effective February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program effective January 29, 1990 (see 54 FR 48889), and October 25, 1991 (see 56 FR 41958), Corrections at (56 FR 51762) and effective January 23, 1995 (see 59 FR 55368–55371). On December 7, 1994, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana Legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed LDEQ's application, and made an immediate final decision that LDEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for the additional program modifications to the State. The public may submit written comments on EPA's final decision until February 6, 1995. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 124, 260–262, 264, 265, 266 and 270, that were published in the FR through June 30, 1988. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Listing of Spent Pickle Liquor (062), [51 FR 19320] May 28, 1986. (Checklist 26).	Louisiana Statutes (LRS) 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §4901.C. Table 2, as amended September 20, 1994, effective September 20, 1994.
2. List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring, [52 FR 25942] September 7, 1987. (Checklist 40).	LHWR §3319.F. as amended July 20, 1990; effective July 20, 1990; LHWR §3325 Table 4, as amended November 20, 1992; effective November 20, 1992; §520.D.2, as amended November 20, 1992; effective November 20, 1992.
3. Identification and Listing of Hazardous Waste (Container/Inner Liner Correction), [52 FR 26012] October 10, 1987. (Checklist 41).	LHWR §4901.E–F, as amended September 20, 1994; effective September 20, 1994; LHWR §3105. Table 1, as amended September 20, 1994; effective September 20, 1994.
4. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, [52 FR 44314] November 18, 1987. (Checklist 43).	LHWR §3715.G.2–3, as amended July 20, 1992; effective July 20, 1992; LHWR §3719.H.2, as amended July 20, 1992; effective July 20, 1992; LHWR §4411.G.2–3, as amended July 20, 1992; effective July 20, 1992.
5. Hazardous Waste Miscellaneous Units, [52 FR 46946] December 10, 1987. (Checklist 45).	LHWR §3301.E, as amended September 20, 1994; effective September 20, 1994; LHWR §109, as amended October 20, 1994; effective October 20, 1994; LHWR §1501.A, as amended November 20, 1992; effective November 20, 1992; LHWR §1509.B.4, as amended November 20, 1992; effective November 20, 1992; LHWR §1503.B.3.a.ii, as amended November 20, 1992; effective November 20, 1992; LHWR §1529.B.9, as amended September 20, 1994; effective November 20, 1994; LHWR §3301.E, as amended September 20, 1994; effective September 20, 1994; LHWR §3507.C, as amended November 20, 1992; effective November 20, 1992; LHWR §3511.A.2, as amended December 20, 1992; effective December 20, 1992; §3515, as amended July 20, 1990; effective July 20, 1990; LHWR §3521.A.1.a–b, as amended May 20, 1990; effective May 20, 1990; LHWR §3523.B.1–2.b, as amended November 20, 1992; effective November 20, 1992; LHWR §3705.A, as amended July 20, 1992; effective July 20, 1992; LHWR §3709.A, as amended May 20, 1990, effective May 20, 1990; LHWR §3715.B, as amended July 20, 1992; effective July 20, 1992; §3201, as amended May 20, 1990; effective May 20, 1990; LHWR §3203–C.7, as amended May 20, 1990; effective May 20, 1990; LHWR §3205, as amended November 20, 1992; effective November 20, 1992; LHWR §3207, as amended November 20, 1992; effective November 20, 1992; LHWR §517.G, as amended November 20, 1992; effective November 20, 1992; LHWR §517.M, as amended November 20, 1992; effective November 20, 1992; LHWR §§534–34.E, as amended May 20, 1990; effective May 20, 1990.
6. Technical Correction; Identification and Listing of Hazardous Waste, [53 FR 13382] April 22, 1988. (Checklist 46).	LHWR §4901.E–F, as amended September 20, 1994; effective September 20, 1994; and LHWR §3105. Table 1, as amended September 20, 1994; effective September 20, 1994.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that LDEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, LDEQ is granted Final Authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize LDEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under Section 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart T until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 1994.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94-31615 Filed 12-22-94; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-3, 201-20, and 201-39

[FIRMR Amendment 3]

RIN 3090-AF04

Amendment of FIRMR Provisions Relating to FIRMR Applicability, FIRMR Bulletins, and Present Value Analysis

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This document amends the Federal Information Resources Management Regulation (FIRMR) regarding: FIRMR applicability provisions relating to the replacement of embedded Federal information processing FIP resources, the delivery of small or inconsequential quantities of FIP resources under non-FIP procurements, and the availability of guidance on interpreting FIRMR applicability provisions; the nonmandatory nature of FIRMR bulletins; and the use of OMB Circular A-94 in performing present value analysis when evaluating bids and proposals.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Horth, telephone FTS/Commercial (202) 501-0960 (v) or (202) 501-0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) This amendment was published in a notice of proposed rulemaking in the January 3, 1994 issue of the **Federal Register**. All comments were considered and, where possible, were incorporated into the amendment. Some comments, which would involve amendments beyond what was intended in these revisions, were not adopted so that this amendment could be issued as quickly as possible to allow agencies to take advantage of the new exceptions to the FIRMR. The comments that were not fully accommodated are discussed below:

(a) A number of comments related to the new $500,000 exception to FIRMR applicability for small quantities of FIP resources. Several respondents felt that the exception should be expanded by increasing the amount or basing the exception on a percentage as well as the dollar amount. Others did not have a clear understanding of the meaning of "predominantly for non-FIP resources." The language in the final rule has been modified to clarify the meaning of the exception and will provide additional flexibility. However, the intent of this exception was to capture situations where some FIP resources will be delivered in a contract but are of little consequence to the major purpose of the contract. Many such situations have been the subject of protest decisions issued by the General Services Board of Contract Appeals and an effort is being made to align the regulations with some of these decisions. The amendment should eliminate some of the situations that have created unnecessary protests. It provides broader flexibility to agencies in acquisitions of mixed requirements where the FIP resources required are only a minor portion of and do not constitute the principle purpose of a solicitation or contract, or where the FIP resources are of little consequence to the purpose of the contract. The exception applies to all FIP resources to be delivered to or acquired for use by the Government or users designated by the Government. Additional guidance will be provided in revisions to FIRMR Bulletin A-1.

(b) Suggestions were made to extend the exception for replacement of embedded FIP to other acquisitions for spare parts or upgrades. The intent of this exception extends only to replacement of embedded FIP resources that initially meet the criteria for exception from the FIRMR. Spare parts or upgrades (unless for the embedded resource) do not meet this description.

(c) Suggestions were made for expansion of the language regarding OMB Circular A-94 or for issuance of guidance. Questions have arisen regarding the mandatory nature of the Circular; its application to purchase (where payments will extend over time) of FIP resources; to services, and to evaluation of sealed bids as well as proposals for FIP resources; and the rates to be applied in specific type acquisitions. The Circular applies to FIP resources, including services. Section 8.c(4) of the Circular specifically addresses information technology requirements. The Circular is mandatory in some situations, but may not be in other situations (e.g., for some acquisitions for less than three years). The rate to be used depends on the type of analysis. An agency must, after review of the Circular, make a determination in each situation as to whether it applies and whether the use of present value factors would make a difference in final prices/costs. The intent of this amendment is to direct agencies to the Circular as a resource in evaluations of bids and proposals, since it replaces rescinded OMB Circular A-104, which was previously used. Details in the regulation could cause confusion, since the Circular may be applied differently in various situations. OMB will assist agencies with the bulletin. Agencies should provide internal guidance. FAR 7.4 contains some guidance on lease vs. purchase buys that may be helpful. GSA will consider additional guidance for FIP resources as the Acquisition Guides are updated.

(d) There were proposals that GSA provide exceptions for broad categories of equipment, such as building support systems. Exceptions for specific categories of equipment are not listed in the regulation itself. GSA will take these suggestions under consideration in making appropriate revisions in FIRMR Bulletin A-1.

(2) Explanations of the amendments follow:

(a) Part 201-1 and subpart 201-39.1 are amended to be responsive to agency concerns that the replacement of FIP resources that initially were excepted from FIRMR applicability as embedded FIP equipment should also be excepted. Since the FIP resources would be used in the same manner as used initially, the amendment grants an exception to FIRMR applicability for the replacement of any FIP equipment, software, or related supplies used in the embedded FIP equipment that has already been granted an exception under § 201-1.002-2(e), regardless of the cost of the replacement resources. This change also clarifies that the criteria for excepting embedded FIP equipment applies to an individual product and not to all the products being acquired.

(b) Part 201-1 and subpart 201-39.1 are also amended to provide an exception to FIRMR applicability for small amounts of FIP resources that will be delivered to the Government when an acquisition is primarily for other purposes and the FIP resources constitute a minimal or insignificant part of the contract. Currently, the FIRMR applies to all FIP resources delivered to a Federal agency or users designated by the agency, no matter how minimal. Given the legislative exceptions for FIP resources that are not "significant" or are "incidental to the performance of a Federal contract." GSA believes that a FIRMR exception is appropriate for acquisitions of FIP resources with a relatively low dollar value when the principal purpose of the

solicitation or contract is for non-FIP resources. Accordingly, the FIRMR is being revised to except such acquisitions when the value of the FIP resources does not exceed $500,000 or where the resources are of little consequence to the major purpose of the contract.

(c) A new § 201–1.002–3 is being added to show that guidance on understanding FIRMR applicability provisions is available in FIRMR Bulletin A–1. Some agencies asked for additional information or how to interpret FIRMR applicability provisions because they have been unaware of the existence of the guidance already available in Bulletin A–1. The addition of this section will correct that deficiency.

(d) Subpart 201–3.001 is being amended to explain the nonmandatory nature of FIRMR bulletins. There is a perception, among some users of the FIRMR, that FIRMR bulletins are regulatory in nature. While there may be a few procedures in FIRMR bulletins that may need to be complied with to be in consonance with the regulation, FIRMR bulletins are not regulatory. They are issued to provide information and guidance that helps agencies acquire or manage FIP resources, explain procedures for using GSA programs, and assist in interpreting the provisions of the Brooks Act.

(e) Sections 201–20.203–2, 201–39.14–1, and 201–39.1501–1 are amended to reflect the fact that OMB Circular No. A–94 should now be used not only as the basis of analyzing the cost of alternatives when doing analyses of alternatives, but also in calculating bid and proposal prices/costs. OMB Circular A–94 replaces the guidance in OMB Circular A–104, used previously in the evaluation of bids and proposals.

(3) GSA has determined that this rule is a significant rule for the purposes of Executive Order 12866. It is certified that this rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Parts 201–1, 201–3, 201–20, and 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Accordingly 41 CFR parts 201–1, 201–3, 201–20 and 201–39 are amended as follows:

PART 201–1—APPLICABILITY AND AUTHORITY

1. The authority citation for part 201–1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–1.002–2 is amended by redesignating paragraphs (d) and (e) as (e) and (f), respectively; adding a new paragraph (d); revising newly designated paragraph (f); and by adding new paragraph (g) to read as follows:

§ 201–1.002–2 Exceptions.

* * * * *

(d) Where the value of the FIP resources to be delivered does not exceed $500,000 and constitutes only a minimal dollar amount of the contract, or is of little consequence to the major purpose of the contract, the FIRMR does not apply.

* * * * *

(f) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when: (1) the embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product, or (2) the dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. In an acquisition where multiple products are acquired, the exception applies to each discrete product.

(g) The FIRMR does not apply to the acquisition, management, and use of FIP resources that will be used in or as embedded FIP resources (equipment, software or supplies) in products excepted from FIRMR coverage under § 201–1.002–2(f). This exception includes replacement or upgrades of the embedded FIP resources, regardless of the cost.

3. Section 201–1.002–3 is added as follows:

§ 201–1.002–3 Procedures.

FIRMR Bulletin A–1 provides an analytical framework, guidance, and examples for use in determining whether the FIRMR applies to an acquisition. Agencies should use this bulletin to assist them in understanding FIRMR applicability provisions.

PART 201–3—THE FIRMR SYSTEM

4. The authority citation for part 201–3 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

5. Section 201–3.001 is amended by revising paragraph (b)(1) to read as follows:

§ 201–3.001 General.

* * * * *

(b) * * *

(1) FIRMR bulletins contain guidance and information on various information resources management subjects. FIRMR bulletins do not constitute binding authority, but should be used as an aid in understanding and using GSA programs and the FIRMR. They may contain procedures for use of GSA programs. FIRMR bulletins are published in appendix B of the looseleaf edition of the FIRMR and are available along with the FIRMR from GPO by subscription or on GSA's CD–ROM.

* * * * *

PART 201–20—ACQUISITION

6. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

7. Section 201–20.203–2 is amended by revising paragraph (c) to read as follows:

§ 201–20.203–2 Cost for each alternative.

* * * * *

(c) Agencies shall follow the guidance in OMB Circular A–94 when calculating the cost of each alternative.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES (FIP) BY CONTRACTING

8. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

9. Section 201–39.101–3 is amended by redesignating paragraphs (b)(4) and (b)(5) as (b)(5) and (6), respectively; adding new paragraph (b)(4); revising newly designated paragraph (b)(6); and by adding new paragraph (b)(7) to read as follows:

§ 201–39.101–3 Applicability.

* * * * *

(b) * * *

(4) Where the value of the FIP resources to be delivered does not exceed $500,000 and constitutes only a minimal dollar amount of the contract, or is of little consequence to the major purpose of the contract, the FIRMR does not apply.

* * * * *

(6) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when: (i) the embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product; or (ii) the dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information." In an acquisition where multiple products are acquired, the exception applies to each discrete product.

(7) The FIRMR does not apply to the acquisition, management, and use of FIP resources that will be used in or as embedded FIP resources (equipment, software or supplies) in products excepted from FIRMR coverage under § 201–39.101–3(b)(6). This exception includes replacement or upgrades of the embedded FIP resources, regardless of the cost.

* * * * *

10. Section 201–39.1402–1 is amended by revising paragraph (b) to read as follows:

§ 201–39.1402–1 Policies.

* * * * *

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies should adjust prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A–94 regarding present value calculations.

11. Section 201–39.1501–1 is amended by revising paragraph (b) to read as follows:

§ 201–39.1501–1 Policies.

* * * * *

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies should adjust prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A–94 regarding present value calculations.

Dated: August 15, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–31595 Filed 12–22–94; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304 and 305

RIN–0970–AB40

Child Support Enforcement Program: Paternity Establishment and Revision of Child Support Enforcement Program and Audit Regulations

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Final rule.

SUMMARY: This final rule contains provisions regarding both paternity establishment and the audit. The paternity establishment provisions implement the requirements of section 13721 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) signed by the President on August 10, 1993, which amends title IV–D of the Social Security Act (the Act). These provisions require States to adopt procedures for a simple civil process for the voluntary acknowledgment of paternity, including early paternity establishment programs in hospitals. For paternity cases that remain contested, the statutory provisions require States to adopt a variety of procedures designed to streamline the paternity establishment process. These include the use of default orders, a presumption of paternity based on genetic test results, conditions for admission of genetic test results as evidence, and expedited decision-making processes for paternity cases in which title IV–D services are being provided.

In addition, this final regulation amends the Child Support Enforcement program regulations governing the audit of State Child Support Enforcement (IV–D) programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV–D of the Act. This regulation specifies how audits will evaluate State compliance with the requirements set forth in title IV–D of the Act and Federal regulations, including requirements resulting from the Family Support Act of 1988 and section 13721 of OBRA '93. This final regulation also redefines substantial compliance to place greater focus on performance and streamlines Part 305 by removing unnecessary sections.

EFFECTIVE DATE: December 23, 1994. For applicability provisions, see **SUPPLEMENTARY INFORMATION** Section.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically: Andrew Williams, (202) 401–1467 regarding paternity establishment provisions; Marilyn R. Cohen, (202) 401–5366 regarding expedited processes; and Lourdes Henry, (202) 401–5440 regarding the audit regulations.

SUPPLEMENTARY INFORMATION:

Applicability Provisions

1. Paternity Establishment Provisions. The paternity establishment provisions of these regulations are applicable on and after December 23, 1994, or the statutory effective date as described below, whichever occurs later. The Federal law provides that the statutory requirements are effective on the later of: (1) October 1, 1993, or (2) enactment by the State legislature of all required laws necessary to conform to the requirements. However, in no event shall the statutory requirements be effective later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after August 10, 1993. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

2. Audit Provisions. The audit provisions of these regulations are applicable for audits conducted for periods beginning on or after December 23, 1994.

Paperwork Reduction Act

The information collection requirement regarding submittal of the State plan preprint page for the new paternity requirements was approved by the Office of Management and Budget under OMB control number 0970–0017. Otherwise, this rule does not require information collection activities and, therefore, no additional approvals are necessary under the Paperwork Reduction Act.

Statutory Authority

1. Paternity Establishment Provisions. This final rule is published under the authority of section 466(a) of the Social Security Act (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Pub. L. 103–66). Section 466(a)(2), as amended,

eliminates the State option for including paternity establishment in expedited processes, thereby requiring States to include paternity establishment in expedited processes. Subsection 466(a)(5)(C) requires States to have laws and procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child. Subsection 466(a)(5)(D) requires States to have laws and procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity. Subsection 466(a)(5)(E) requires States to have laws and procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

Subsection 466(a)(5)(F) requires States to have laws and procedures which provide that (i) any objection to genetic test results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. Subsection 466(a)(5)(G) requires States to have laws and procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child.

Subsection 466(a)(5)(H) requires States to have laws and procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law. Section 466(a)(11) requires States to have laws and procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes. These final regulations are also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

2. Audit Provisions. This final regulation is published under the authority of sections 1102, 402(a)(27), 452(a)(4), and 403(h) of the Act. Section 1102 authorizes the Secretary to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Section 402(a)(27) requires each State to operate a child support program in substantial compliance with the title IV–D State plan. Section 452(a)(4) requires an audit of each State IV–D program to assure compliance with title IV–D requirements at least once every three years (or not less often than annually in the case of any State which is being penalized, or is operating under a corrective action plan). Finally, section 403(h) provides for the imposition of an audit penalty of not less than 1 nor more than 5 percent of a State's AFDC funding for any State which fails to substantially comply with title IV–D requirements within the period of time the Secretary determines to be appropriate for corrective action.

Background

This final rule contains regulations that: (1) Implement the paternity establishment provisions of OBRA '93, and (2) revise the child support enforcement audit regulations. The proposed audit rule was published September 9, 1993 (58 FR 47417), and the proposed paternity rule on November 29, 1993 (58 FR 62599), each with 60-day public comment periods. These two proposed regulations overlapped in some areas. In particular, the "credit for providing services" portion of the proposed audit regulation was affected by changes to expedited process requirements made by the proposed paternity regulation. Furthermore, changes to paternity establishment requirements made by the proposed paternity regulation impacted which paternity requirements would be audited under the audit regulation. Because the two proposed regulations were at similar stages of the regulatory process and because they overlapped in certain areas, we decided to combine them in this final regulation.

1. Paternity Establishment Provisions. Paternity establishment is a necessary first step in the child support enforcement process in cases where a child is born out-of-wedlock. In addition to child support, paternity establishment may result in other financial benefits for the child, including Social Security dependents' benefits, pension benefits, veterans' benefits, and possible rights of inheritance. Furthermore, paternity establishment may give children social and psychological advantages and a sense of family heritage, be a first step in creating a psychological and social bond between father and child, and provide important medical history information.

The Federal government has long recognized the importance of paternity establishment. In 1975, by enactment of Title IV–D of the Social Security Act, Congress required States to establish public child support enforcement agencies and to provide paternity establishment services. The Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) required States to permit paternity to be established until a child's 18th birthday. The Family Support Act of 1988 (Pub. L. 100–485) contained several provisions designed to improve paternity establishment: A performance standard, timeframes for case processing, enhanced funding (90 percent Federal financial participation) for genetic testing, a requirement that States compel all parties in a contested paternity case to submit to genetic testing upon the request of a party, a requirement that States compel each parent to provide his or her social security number as part of the birth certificate issuance process, and a clarification of the expansion of the requirement permitting paternity establishment to 18 years of age.

Partly as a result of these Federal efforts, the number of paternities established each year by the IV–D program has increased substantially from about 270,000 in FY 1987 to more than 553,000 in FY 1993—an increase of over 100 percent in just six years. However, the percentage of children born out-of-wedlock also continues to increase. In 1991, almost 30 percent of American children, over 1.2 million children, were born to unmarried mothers. Currently, as reported by State agencies, paternity is only established for about one-sixth of the children who need it per year. Even in cases where paternity is established, the process is often lengthy and adversarial in nature.

Therefore, the President and Congress decided to further reform the system through changes to title IV–D in the OBRA '93. The Administration proposed the new paternity requirements as an initial step in the President's efforts to improve the child support enforcement program. While this rule is based on existing law, it serves as a foundation for additional

reforms proposed by the President's Welfare Reform bill.

The amended statute and these implementing regulations are intended to increase both the number of paternities established for children born out-of-wedlock and the timeliness with which paternity establishment is accomplished. In particular, these provisions will increase the number of paternities established by voluntary acknowledgment. However, some cases will remain contested, and these reforms should expedite the process for resolving those cases as well.

Many of these reforms are based on innovative State practices and recommendations of the U.S. Commission on Interstate Child Support. Congress created the Interstate Commission as part of the Family Support Act of 1988 to recommend ways of improving the interstate establishment and enforcement of child support awards. In 1992, the Commission issued its comprehensive final report to the Congress which contained numerous recommendations, including recommendations for improving paternity establishment in both interstate and intrastate cases.

Because Congress added the newly-mandated practices to section 466(a) of the Act, they are requirements which States must meet as a condition of State plan approval under section 454(20) of the Act. These regulations add the new State plan requirements to 45 CFR 302.70. Each State's title IV–D plan must be approved for the State to receive Federal financial participation in the operation of its Child Support Enforcement program.

2. Audit Provisions. As a result of the enactment of the Child Support Enforcement Amendments of 1984, OCSE published final audit regulations on October 1, 1985, which governed the audits of State IV–D programs beginning in FY 1984. Section 452(a)(4) of the Act and implementing regulations require that OCSE conduct audits of the effectiveness of State Child Support Enforcement programs at least once every three years; specify that OCSE use a substantial compliance standard to determine whether each State has an effective IV–D program; provide that any State found not to have an effective IV–D program in substantial compliance with the requirements of title IV–D of the Act be given an opportunity to submit a corrective action plan and, upon approval by OCSE, to take the corrective action necessary to achieve substantial compliance with those requirements; provide for the use of a graduated penalty of not less than 1 nor more than 5 percent of the Federal share of a State's Aid to Families with Dependent Children (AFDC) program funds if a State is not in substantial compliance; and specify the period of time during which a penalty is effective.

On August 4, 1989, a final rule, Standards for Program Operations, was published (54 FR 32284) to implement the requirements of sections 121 and 122 of the Family Support Act. Specifically, this final rule revised 45 CFR parts 302 and 303 to specify standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV–D of the Act. States were required to meet these standards beginning October 1, 1990.

With regard to other Family Support Act requirements, on May 15, 1991, a final rule was published which implemented the requirements governing $50 pass-through payments, guidelines for setting child support awards, mandatory genetic testing, paternity establishment and laboratory testing (56 FR 22335). The requirements governing immediate wage withholding, review and adjustment of support obligations and monthly notice of support collections were published on July 10, 1992 (57 FR 30658). A final rule was published on November 19, 1992 (57 FR 54515) to clarify timeframes for processing child support collections. Additional review and adjustment requirements were published December 28, 1992 (57 FR 61559).

As a result of the passage of time, the child support provisions of the Family Support Act and OBRA '93, and the necessary changes to program regulations, we reexamined the audit process and regulations and developed this final regulation. In doing so, we considered the impact of the new requirements on States and our experience with the audit process to date. We considered comments received in response to our notice of proposed rulemaking published September 9, 1993 (58 FR 47417).

Furthermore, we considered the concerns that many States and other groups have expressed about the current audit process. First, there is a concern that the scope, complexity, and length of the audit is expanding. OCSE audits cover numerous criteria and sub-criteria. The child support provisions of the Family Support Act of 1988 add to the complexity of the support enforcement program, and hence the audit process, by significantly expanding the number of criteria to be reviewed. Partly as a result of this growing scope and complexity, it takes an increasingly greater amount of time and effort to conduct audits. This may cause delays in obtaining results and in performing audits in other States. In addition, although service delivery is already the primary focus of the audit (i.e., the 75 percent case action standard), there is a concern that the audit should focus more on outcomes and results. Focusing more on outcomes and results, including the timeliness of providing services, would allow the audit to better measure State program performance.

In response to concerns about the expanding scope of the audit, we have redefined substantial compliance to focus on certain criteria: (1) Service-related criteria that a significant number of States have failed to comply with in the past; and (2) new or newly-revised criteria. Eliminating certain administrative or procedural criteria and focusing on service-related criteria to the extent possible will produce a more results-oriented audit. The audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State plan approval process, the program audit process, and the audit resolution and tracking system to review and monitor State compliance and performance.

This final regulation also specifies how audits would evaluate State compliance with the standards for program operations as well as other requirements mandated by the Family Support Act of 1988 and paternity establishment requirements of OBRA '93 by setting forth new and revised audit criteria and processes. The rule combines related requirements into groupings, and streamlines part 305 by removing unnecessary sections. The requirements in this final regulation are effective for audits conducted for periods beginning on or after December 23, 1994.

Description of Regulatory Provisions

1. Paternity Establishment Provisions.

Required State Laws—Section 302.70(a)

Section 466(a) of the Act requires a State to have laws that require the use of these new paternity procedures. Consistent with the rules implementing the Family Support Act requirements, a State may comply by issuing regulations, procedures, or court rules, instead of enacting laws, if they have the same force and effect under State law on the parties to whom they apply.

To simplify the regulatory language, we have deleted effective dates of IV–D State plan requirements previously listed in § 302.70(a).

Simple Civil Process for Voluntarily Acknowledging Paternity—Sections 302.70(a)(5)(iii) and 303.5(a)

This rule implements the requirements of new section 466(a)(5)(C) of the Act by amending § 302.70(a)(5) to add new paragraph (iii). This provision requires each State to have laws and procedures for a simple civil process for voluntarily acknowledging paternity. Under such process, the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded.

The statute requires that the voluntary acknowledgment procedures include hospital-based programs. However, because the statute includes hospital-based programs as part of a broader requirement for voluntary acknowledgment procedures, we believe Congress intended these procedures to encompass more than just hospital-based programs. Therefore, new § 302.70(a)(5)(iii)(B) requires that the procedures include a process for voluntarily acknowledging paternity outside of hospitals.

IV–D Agency Activity. To reflect the newly-mandated procedures for the voluntary acknowledgment of paternity, § 303.5(a) requires, for all cases referred to the IV–D agency or applying for services under § 302.33 in which paternity has not been established, the IV–D agency must, as appropriate: (1) Provide an alleged father the opportunity to voluntarily acknowledge paternity, in accordance with § 302.70(a)(5)(iii), and (2) attempt to establish paternity by legal process under State law. (The IV–D agency is not required to take additional action to establish paternity if, under State law, the acknowledgment itself establishes paternity).

Hospital-Based Paternity Establishment Programs—Sections 301.1, 302.70(a)(5)(iii)(A), 303.5 (g) and (h), 304.20(b)(2), and 304.23(d)

In enacting OBRA '93, the President and Congress recognized the importance of establishing a child's paternity as close to the time of birth as possible, by requiring hospital-based programs for obtaining voluntary acknowledgments. New § 302.70(a)(5)(iii)(A) implements section 466(a)(5)(C) of the Act by requiring each State to have laws, regulations, and/or binding procedures for a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child. At a minimum, new § 302.70(a)(5)(iii)(A) requires State law, regulation, and/or binding procedure to compel all public and private birthing hospitals to participate in hospital-based programs, as defined in § 303.5(g)(2). (However, under § 302.70(d), a State may apply for an exemption from enacting a law, regulation, or procedure providing for a hospital-based program, if the State can assure that a hospital-based program otherwise meeting Federal requirements is implemented in every birthing hospital in the State by January 1, 1995 (or later if Federal law governing the effective date allows) without the necessity of enacting binding laws or regulations). We define "birthing hospital" at § 301.1 as a hospital that has an obstetric care unit or that provides obstetric services, or a birthing center associated with a hospital.

Section 303.5(g) describes the State's responsibilities in implementing the hospital-based program. To accommodate divergent State practices, the State as a whole, rather than the IV–D agency in particular, is responsible for meeting the hospital-based program requirements at § 303.5(g). This approach in no way relieves the State of the responsibility to meet Federal requirements as a condition of IV–D State plan approval.

Section 303.5(g)(1) requires the State to establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital. States must have laws, regulations, and/or binding procedures in place on October 1, 1993 (or if legislation is required, the beginning of the first calendar quarter after the close of the first regular session of the State legislature that began after August 10, 1993). The programs must be operational in birthing hospitals statewide no later than January 1, 1995 (unless Federal law governing the effective date gives the State additional time; i.e., unless the State's first regular legislative session beginning after August 10, 1993 precludes enactment by January 1, 1995).

Elements of a Hospital-Based Program. Section 303.5(g)(2) defines a hospital-based program by listing the services and functions such a program must, at a minimum, provide during the period immediately before or after the birth of a child to an unmarried woman in the hospital. These services are based on information provided by States that previously implemented hospital-based programs. The State must ensure, in cooperation with the hospitals, that the program performs all of these functions.

Each hospital-based program must provide voluntary acknowledgment services to unmarried mothers and alleged fathers. The program must provide services regardless of the child's public assistance status or whether an application has been filed for IV–D child support services.

Under § 303.5(g)(2)(i), a hospital-based program provides to both the mother and alleged father, if he is present in the hospital: (A) Written materials about paternity establishment, (B) the forms necessary to voluntarily acknowledge paternity, (C) a written description of the rights and responsibilities of acknowledging paternity, and (D) the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment. In a case where the alleged father is not present at the hospital, the hospital-based program should provide to the unmarried mother the services described in § 303.5(g)(2)(i).

Under § 303.5(g)(2)(ii), a hospital-based program provides the unmarried mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity *in the hospital* A hospital-based program, under § 303.5(g)(2)(iii), must afford due process safeguards, as required by State law and procedure.

Under § 303.5(g)(2)(iv), a hospital-based program must forward completed acknowledgments or copies to the entity designated under § 303.5(g)(8). This will ensure that the IV–D agency has access to and can use the acknowledgments in cases that become IV–D cases.

Under § 303.5(g)(3), a hospital-based program need not provide services related to acknowledging paternity in cases where the mother or alleged father is a minor or a legal action (e.g., adoption) is already pending, if provision of such services is precluded by State law.

Under § 303.5(g)(4), the State must require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

Section 303.5(g)(5) requires the State to provide to all public and private birthing hospitals in the State written materials about paternity establishment, forms necessary to voluntarily acknowledge paternity, and copies of a written description of the rights and responsibilities of acknowledging paternity. Hospital-based programs will then distribute these materials and forms to unmarried mothers and alleged fathers in accordance with § 303.5(g)(2)(i). While not a requirement States may also wish to provide applications for, and materials relating to, IV–D services to hospitals for

distribution to maternity patients or other interested parties.

Section 303.5(g)(6) requires the State to provide staff training, guidance, and written instructions regarding the voluntary acknowledgment of paternity as necessary to operate the hospital-based program. Section 303.5(g)(7) requires the State to assess each birthing hospital's program on at least an annual basis.

Section § 303.5(g)(8) requires the State to designate an entity to which hospital-based programs must forward completed voluntary acknowledgments or copies. Under State procedures, this entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV–D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f). Under § 303.5(h), in IV–D cases needing paternity establishment, the IV–D agency must determine if identifying information about a voluntary acknowledgment has been recorded in the statewide database, in accordance with § 303.5(g)(8).

FFP Availability for Hospital-Based Programs. This regulation expands Federal financial participation (FFP) availability for certain costs associated with hospital-based programs. Under § 304.20(b)(2)(vi), FFP is available for payments of up to $20 to birthing hospitals and other entities that provide prenatal or birthing services for each voluntary acknowledgment obtained pursuant to an agreement with the IV–D agency. Section 304.20(b)(2)(vii) makes FFP available for the costs of developing written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity and providing such materials to birthing hospitals and other entities that provide prenatal or birthing services. Section 304.20(b)(2)(viii) makes FFP available for reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program as defined by § 303.5(g)(2). This rule also modifies § 304.23(d), which limits the availability of FFP for training to specific circumstances, to allow for FFP as provided for in § 304.20(b)(2)(viii).

Effect of Voluntary Acknowledgment: Presumption of Paternity; Admissible as Evidence—Section 302.70(a)(5)(iv)

This rule implements the requirements of section 466(a)(5)(D) of the Act by adding § 302.70(a)(5)(iv). This provision requires each State to have laws and procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity. It is designed to ensure that voluntary acknowledgments are meaningful and used to expedite paternity establishment in every State.

A rebuttable presumption shifts the burden of proof to the presumed father to disprove a paternity allegation. A conclusive presumption has the same effect as a judgment for paternity. Even if a State chooses to adopt a conclusive presumption, it may provide for conditions under which the presumption, like a judgment, can be challenged and potentially overturned (e.g., in cases where there is evidence that the acknowledgment was obtained by fraud or coercion, or where signatures were forged).

Conditions for Admission of Genetic Test Results as Evidence—Section 302.70(a)(5)(v)

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process in contested cases. Genetic tests can not only produce exclusionary evidence eliminating a man from consideration as the biological father, but can also provide convincing evidence reflecting the high probability that a particular man is the alleged father (inclusionary results), leaving little or no doubt as to whether an alleged father is actually the biological father. Statutory or case law in virtually all States provides that genetic test results are admissible as evidence. However, in some States, the process for admitting such evidence can be cumbersome.

Section 302.70(a)(5)(v), which implements section 466(a)(5)(F) of the Act, should improve the process for admitting test results in legal proceedings. It requires each State to have laws and procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence. Further, laws and procedures must specify that if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

Presumption of Paternity Based on Genetic Test Results—Section 302.70(a)(5)(vi)

Section 466(a)(5)(G) of the Act and implementing regulation at § 302.70(a)(5)(vi) require each State to have laws and procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity based on genetic testing results which indicate a threshold probability of the alleged father being the father of the child. A presumption of paternity should expedite paternity resolution.

Voluntary Acknowledgment Is Basis for Seeking Support Order—Sections 302.70(a)(5)(vii) and 303.4(f)

We are implementing section 466(a)(5)(E) of the Act by adding § 302.70(a)(5)(vii). This provision requires each State to have laws and procedures under which a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity. As a result, filing a petition seeking a support order and information-gathering necessary for support order establishment should begin in a IV–D case as soon as a voluntary acknowledgment is obtained. This should help ensure that the child receives financial support at the earliest possible date.

To reflect that a voluntary acknowledgment must serve as sufficient basis to seek establishment of a support order, we amended § 303.4 by adding paragraph (f). Section 303.4(f) requires the IV–D agency, in cases where a support order has not been established, to seek a support order based on a voluntary acknowledgment in accordance with § 302.70(a)(5)(vii). Therefore, the IV–D agency must gather information and establish support administratively, by consent, or by filing a petition for support order establishment upon receipt of a voluntary acknowledgment of paternity.

Default Orders—Sections 302.70(a)(5)(viii) and 303.5(f)

We have implemented the requirements of new section 466(a)(5)(H) of the Act by adding § 302.70(a)(5)(viii). Under this provision, each State must have laws and procedures requiring that a default order be entered in a paternity case

upon a showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law. State law must require, not simply allow, tribunals, upon proper motion, to enter default orders under these conditions.

To reflect the new default order requirement, we added § 303.5(f). It requires the IV–D agency to seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

Full Faith and Credit for Paternity Determinations—Section 302.70(a)(11)

We implemented the requirements of section 466(a)(11) of the Act by adding § 302.70(a)(11). This provision requires each State to have laws and procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

This provision should improve interstate processing since a State, upon receiving a paternity determination made by another State, must recognize such determination and move forward with the next step (e.g., support order establishment or enforcement) without questioning or reopening the paternity issue.

Expedited Processes for Paternity Establishment—Sections 302.70(a)(2), 303.4(d), and 303.101

The Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) required States to have an expedited process within their judicial or administrative systems for obtaining and enforcing child support orders. At the option of the State, the expedited processes could also include actions for establishment of paternity. Expedited process timeframes, established by regulation, have been effective in prompting States to adopt expedited administrative and quasi-judicial processes for establishing and enforcing support orders. Prior to enactment of OBRA '93, according to the IV–D State plans, 19 States had also opted to extend expedited processes to paternity establishment. However, in many jurisdictions the paternity establishment process, particularly in contested cases, is still protracted.

To address this problem, OBRA '93 amended section 466(a)(2) of the Act to mandate use of expedited processes for establishing paternity. We have implemented this new provision by revising § 302.70(a)(2) to require each State to have laws and procedures for expedited processes to establish paternity, in addition to the previously mandated expedited processes for establishing and enforcing child support orders.

As specified in section 466(a)(2) of the Act, expedited processes are defined in Federal regulations. The provision of the Act regarding expedited processes for support order establishment and enforcement was previously implemented by § 303.101. This rule amends these regulations to require expedited processes for paternity establishment. It also deletes § 303.101(b)(3), which gave States the option of including paternity establishment in their expedited processes, since use of an expedited process for handling paternity cases is now mandatory.

As with the expedited processes for support order establishment and enforcement, under expedited paternity establishment processes both intrastate and interstate cases must be included as required by § 303.101(b)(1).

Paternity and Support Establishment Timeframe. The regulatory definition of expedited process is based on timeframes—States must process IV–D cases within specified timeframes in order to be determined to be operating an expedited process. Because OBRA '93 mandates the expansion of expedited processes to include paternity establishment, and because the regulatory definition of expedited process is based on timeframes, we reexamined previously-existing expedited process and program standard timeframes.

Although paternity establishment was not included in expedited process prior to enactment of OBRA '93, there were two timeframes governing paternity establishment under standards for program operations (see chart below). First, former § 303.5(a)(1) was a "front-end" timeframe governing IV–D agency activity. It allowed the IV–D agency 90 calendar days, from the date of locating the alleged father, to file for paternity establishment or serve process (or document unsuccessful efforts), whichever occurred later in accordance with State procedures. Second, former § 303.5(a)(2) was a "back-end" timeframe governing court or administrative agency activity. It allowed one year, from successful service of process or the child becoming six months of age, to establish paternity or exclude the alleged father

There were also two sets of timeframes for support order establishment. First, there was a 'front end" timeframe at former § 303 4(d) for IV–D agency activity. It allowed the IV–D agency 90 calendar days, from establishing paternity or locating the obligor, to establish a support order (by consent) or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful efforts). Second, there were expedited process timeframes for support order establishment at previous § 303.101(b)(2) governing activity within a State's quasi-judicial or administrative agency. Expedited process timeframes were designed to ensure that cases were adjudicated expeditiously in the State's court or administrative system. Under the previous definition of expedited process, a State's process or combination of processes was considered "expedited" when the State completed support order establishment from service of process to disposition in 90 percent of all cases in 3 months, 98 percent in 6 months, and 100 percent in 12 months. These timeframes also applied to enforcement actions.

FORMER TIMEFRAMES FOR PATERNITY AND ORDER ESTABLISHMENT

Action needed	Reg cite	Starting point	Time period	Ending point
Establish Paternity	303.5(a)(1)	Locate	90 calendar days	File for paternity or SOP, whichever later
	303.5(a)(2)	SOP or child's sixth month.	1 year	Paternity established or man excluded.
Establish Support Order	303.4(d)	Paternity establishment or locate.	90 calendar days	Support order established or SOP

FORMER TIMEFRAMES FOR PATERNITY AND ORDER ESTABLISHMENT—Continued

Action needed	Reg cite	Starting point	Time period	Ending point
	303.101(b) (2)	Service of process.	90% in 3 months; 98% in 6 months; 100% in 1 year.	Support order established/recorded or action dismissed.

SOP=Service of process; if agency is unable to serve process, it must document unsuccessful efforts.

This rule replaces the timeframes for paternity and support order establishment at §§ 303.4(d), 303.5(a)(1), 303.5(a)(2), and 303.101(b)(2) with two new timeframes (see chart below) at §§ 303.4(d) and 303.101(b)(2)(i). Both of the new timeframes apply to IV–D cases needing support order establishment, regardless of whether paternity has been established.

NEW TIMEFRAMES FOR ESTABLISHMENT OF SUPPORT ORDER AND, IF NECESSARY, PATERNITY

Action needed	Reg cite	Starting point	Time period	Ending point
Establish Support Order and, if Necessary, Paternity.	303.4(d)	Locate	90 calendar days	Support order established or SOP.
	303.101(b)(2)(i)	Service of process.	75% in 6 months; 90% in 12 months.	Support order established/recorded or action dismissed.

SOP=Service of process; if agency is unable to serve process, it must document unsuccessful efforts.

The new "front-end" timeframe at § 303.4(d) requires the IV–D agency, within 90 calendar days of locating the alleged father or noncustodial parent, to establish a support order or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

In addition, a State must meet the new "back-end" timeframe at § 303.101(b)(2)(i) in order to have an expedited process for paternity establishment and support order establishment. This timeframe requires that actions to establish support orders be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

We define "disposition" in regulation at § 303.101(b)(2)(iv) as the date on which a support order is officially established and/or recorded or the action is dismissed. This definition codifies policy previously stated at OCSE–AT–88–19. However, we have changed the word "obligation" (contained in previous policy and the proposed rule) to "order", at the suggestion of a commenter. Parents have the obligation to support their children from the time of birth; the establishment or recording of a child support order should be used to measure case disposition.

Under § 303.101(b)(2)(iii), for purposes of the expedited process timeframe for paternity and support order establishment, in cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of the date of service of process, the case may be counted as successful within the 6 month tier of the timeframe, regardless of when disposition occurs within the 12 months. Crediting the State's efforts to keep the proceeding as a one-State case in this way should encourage States to rely upon long-arm jurisdiction to the greatest extent possible.

Unlike the previous paternity establishment timeframe at former § 303.5(a)(2), the new expedited process timeframe begins with service of process, regardless of the age of the child.

Enforcement Timeframes. The expedited process timeframe at § 303.101(b)(2)(i) does not apply to enforcement. Instead, § 303.101(b)(2)(ii) specifies that in IV–D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§ 303.6(c)(2) and 303.100. States will be required to meet the existing timeframe at § 303.6(c)(2) for all enforcement actions other than income withholding and State/Federal income tax refund offset. The timeframe at § 303.6(c)(2) requires enforcement action within no more than 30 calendar days (if service of process is not needed) or 60 calendar days (if service of process is needed) of identifying a delinquency or other support-related noncompliance, or location of the absent parent, whichever is later. States will also be required to meet the existing timeframes at § 303.100 in income withholding cases.

Judges as Presiding Officers. By deleting the phrase "and under which the presiding officer is not a judge of the court" in former § 303.101(a), we have eliminated the requirement which precluded using a judge as a presiding officer in carrying out expedited processes. With this change, expedited processes are now defined in § 303.101(a) as administrative or expedited judicial processes, or both, which increase effectiveness and meet processing timeframes.

Other Changes. We amended the safeguards required under § 303.101(c) to include paternity establishment as well as support order establishment and enforcement. We revised § 303.101(c)(1) to require that paternities as well as support orders established via expedited process, by means other than judicial process, must have the same effect under State law as paternities and orders established by full judicial process within the State. We also revised § 303.101(c)(3) to require that the parties be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order. The remaining safeguards are unchanged except that they now also apply to expedited paternity processes: The due process rights of the parties involved must be protected as required by § 303.101(c)(2); there must be written procedures for ensuring the qualification of presiding officers as required by § 303.101(c)(4); recommendations of presiding officers may be ratified by a judge as allowed by § 303.101(c)(5); and action taken may be

reviewed under the State's generally applicable judicial procedures as provided by § 303.101(c)(6).

We amended the functions of presiding officers in § 303.101(d) to cover paternity establishment as well as support order establishment and enforcement. Section 303.101(d)(2) requires presiding officers to evaluate evidence and make recommendations to establish paternity as well as to establish and enforce orders. Section 303.101(d)(3) requires presiding officers to accept voluntary acknowledgments of paternity, in addition to voluntary acknowledgments of support liability and stipulated agreements setting the amount of support to be paid.

Presiding officers will continue to have authority to enter default orders. However, we amended this requirement at § 303.101(d)(4) to reflect the language of the default order provision in new §§ 302.70(a)(5)(viii) and 303.5(f). As amended, § 303.101(d)(4) requires that the functions of presiding officers include entering default orders upon showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law. This default order provision applies to paternity as well as support order establishment cases. We also added a new function for presiding officers in paternity cases at § 303.101(d)(5)—ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

Furthermore, we amended § 303.101(e) regarding exemptions from expedited process to recognize that expedited process now includes paternity establishment. Under the amended provision, a State is able to request an exemption from any of the expedited process requirements for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d).

2. Audit Provisions. This final regulation amends Part 305 in several ways: by revising the evaluation criteria to reflect requirements in 45 CFR parts 302 and 303 in effect prior to the Family Support Act that the States often had not substantially complied with in the past; by adding criteria to reflect the enactment of the Family Support Act of 1988 including those governing standards for program operations, guidelines for setting child support awards, immediate wage withholding, and review and adjustment of child support orders; by eliminating duplicative regulations from part 305; by adding evaluation criteria to reflect the paternity establishment provisions of the OBRA '93; and, by redefining criteria that States must meet to be determined to be in substantial compliance.

General Definitions—§ 301.1

For consistency with the changes to part 305, the definition of "procedures" is removed from § 305.1(b) and placed in alphabetical order in § 301.1.

Scope of Part 305—§ 305.0

Regulations at § 305.0 describe 45 CFR part 305 section by section. Sections 305.10 through 305.13 describe the audit; § 305.20 defines an effective program for purposes of an audit; § 305.98 sets forth performance indicators; § 305.99 governs the notice and corrective action period; and § 305.100 governs the imposition of a penalty.

Previously, sections 305.21 through 305.57 set forth criteria used to determine program effectiveness. However, §§ 305.21 through 305.57 merely cross-referenced and/or restated the requirements in the corresponding State plan regulations in part 302 and related program requirements in part 303. Accordingly, we have removed §§ 305.21 through 305.57 and, revised § 305.20 which lists administrative criteria States must meet and service-related criteria for which States must have and use required procedures in a specified percentage of the cases reviewed for each criterion. In addition, we have revised § 305.20 to permit the States, when timeframes are not met, to receive credit when the necessary service is provided during the audit period. Also, § 305.20 cross-references relevant State plan and program regulations contained in parts 302 and 303.

Accordingly, § 305.0 is revised to state: Sections 305.10 through 305.13 describe the audit; § 305.20 sets forth audit criteria and subcriteria OCSE will use to determine program effectiveness and defines an effective program for purposes of an audit; § 305.98 sets forth the performance indicators OCSE will use to determine State IV–D program effectiveness; § 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV–D program; and § 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and to have failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

Definitions—§ 305.1

As previously discussed, the definition of "procedures" in § 305.1(b) was moved to § 301.1. Section 305.1 continues to provide that the definitions found in § 301.1 apply to part 305.

Timing and Scope of the Audit—§ 305.10

For consistency with the changes made elsewhere in part 305, § 305.10(a) is revised to state that the audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20 and 305.98. As a technical change, the title "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" in paragraph (c)(2) is changed to "Government Auditing Standards."

State Comments—§ 305.12

Previous regulations at § 305.12(a) provided for informing the IV–D agency during the audit entrance conference of those political subdivisions of the State that would be audited and making preliminary arrangements for personnel and information to be made available. We replaced this provision with more general language indicating that any necessary arrangements for conducting the audit will be made at the audit entrance conference. However, no change in current practice, or in the information provided to States, is intended or anticipated as a result of this change. States will continue to be notified in the letter they receive from OCSE in the quarter preceding commencement of the audit of all information necessary to prepare for the audit.

Effective Support Enforcement—§ 305.20

Previous regulations at § 305.20 set forth the criteria which are used to measure State compliance with the requirements of title IV–D of the Act.

1. *Revised definition of substantial compliance.* Section 305.20 redefines the criteria that States must meet to be determined to be in substantial compliance. As part of this final rule, § 305.20 is changed to address regulatory requirements including non-AFDC Medicaid and former AFDC cases, program standards and timeframes requirements, other program requirements under Pub. L. 100–485 (e.g., guidelines for setting child support awards, review and adjustment of child support orders, monthly notice of support collections, mandatory genetic testing, and immediate wage

withholding) and paternity establishment requirements under OBRA '93.

While program regulations specify how States must operate IV–D programs to be in compliance with State plan requirements and what program expenditures may qualify for Federal funding, audit regulations specify those requirements which must be met in order for a State to be determined to be in substantial compliance with the requirements of title IV–D of the Act and to avoid fiscal penalties. We have redefined substantial compliance to focus on certain criteria: (1) Service-related criteria with which a significant number of States have failed to comply in the past; and (2) new or newly-revised criteria. Focusing on these criteria eliminates many of the administrative or procedural criteria which were previously part of substantial compliance determinations and which are currently being met, thereby making the audit more results-oriented. As previously stated, the audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State plan approval process, the program audit process, and the audit resolution and tracking system to review and monitor State compliance and performance.

a. *Ten percent materiality test.* First, the determination of substantial compliance includes criteria that, based on past audits, many States have failed. In selecting these criteria, we specifically examined initial and annual audits conducted under the prior audit regulations, and determined the number of States that had failed each existing criterion compared to the number of audit reports issued since that criterion became effective.

Therefore, the determination of substantial compliance includes examination of those criteria which, in general, more than ten percent of the States had failed during that period.

The ten percent test is consistent with the auditing concept of "materiality." According to auditing theory, an audit should be able to detect errors and conditions that *materially* affect the ability of the child support program to achieve desired results and benefits. Ten percent is commonly used as a benchmark for materiality. In this case, we believe that if less than ten percent of States are failing a given criterion, we can omit that criterion from the determination of substantial compliance without materially affecting the audit's conclusions about the child support program in the State. However, if a specific criterion meets the other test for inclusion in substantial compliance (e.g., it is new or newly-revised), it is *not* deleted.

More than ten percent of the States failed the following criteria: Reports and maintenance of records; separation of cash handling and accounting functions; establishing paternity; distribution; services to individuals not receiving AFDC or title IV–E foster care assistance; State parent locator service; support obligations; notice of collection of assigned support; Federal income tax refund offset; withholding of unemployment compensation; wage or income withholding; imposition of liens against real and personal property; posting security, bond or guarantee to secure payment of overdue support; and medical support enforcement.

b. *New and newly-revised criteria.* After applying the ten percent materiality test to existing audit criteria, we turned to new requirements (for the most part, based on the Family Support Act of 1988) that have not been audited in the past and which, therefore, cannot be judged by the ten percent materiality rule. All of these requirements will be evaluated in the determination of whether a State's IV–D program is in substantial compliance. Additionally, because there have been regulatory revisions to several other pre-existing requirements (e.g., provision of services in interstate IV–D cases, services to individuals not receiving AFDC or title IV–E foster care assistance, and medical support requirements), we retained these revised criteria in the determination of substantial compliance.

Based on past experience with State implementation of new or significantly-changed program requirements, we believe that States' activities related to requirements mandated by the Family Support Act and the OBRA '93 and revised, pre-existing requirements must be audited to ensure State compliance. These criteria are: Collection and distribution of support payments by the IV–D agency, § 302.32; distribution of support collections, § 302.51; notice of collection of assigned support, § 302.54; guidelines for setting child support awards, § 302.56; establishment of cases and maintenance of case records, § 303.2; location of non-custodial parents, § 303.3; establishment of support obligations, § 303.4; establishment of paternity, § 303.5; enforcement of support obligations, § 303.6; State income tax refund offset, § 303.6; provision of services in interstate IV–D cases, § 303.7; review and adjustment of support obligations, § 303.8; case closure, § 303.11; securing medical support information, § 303.30; securing and enforcing medical support obligations, § 303.31; procedures for wage or income withholding, § 303.100, and expedited processes, under § 303.101.

We emphasize that States are required to meet all Federal requirements contained in program regulations, whether or not the requirements are included under § 305.20. Auditors may still examine requirements that are not contained in § 305.20, but would issue management recommendations, instead of findings of substantial noncompliance, for failure to meet program requirements not included under § 305.20. Implementation of management recommendations should help States to improve their performance. In addition, compliance with all program requirements will continue to be monitored by Regional Offices of the Administration for Children and Families through program and financial reviews and the State plan approval process.

In addition to narrowing the number of criteria contained in the determination of substantial compliance, we have streamlined the audit regulations by grouping related requirements under certain criteria (e.g., wage or income withholding under enforcement).

Grouping is merely a way to evaluate related requirements and will allow audit results to be reported in a more timely manner. States must still meet the requirements of each specific regulation cited.

2. *Criteria States must meet to be determined to be in substantial compliance.* Section 305.20(a) requires that, for audit periods beginning on or after December 23, 1994, a State must meet the IV–D State plan requirements contained in part 302 of this chapter measured as set forth in paragraph (a).

a. *Administrative criteria.* Under § 305.20(a)(1), the State must meet the requirements under the following criteria:

(1) Statewide Operations, § 302.10;

(2) Reports and Maintenance of Records, § 302.15(a);

(3) Separation of cash handling and accounting functions, § 302.20; and

(4) Notice of Collection of Assigned Support, § 302.54.

b. *Service-related criteria.*

i. *90 percent standard for case opening and closure.* Unless applications are provided upon request and accepted in a timely manner and cases are opened and maintained appropriately, needed IV–D services cannot be provided. Furthermore, with regard to case closure criteria, it is essential that only those cases for which

there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child support, either now or in the future, are closed.

In response to our request for comments regarding the 90 percent standard proposed in the September 9, 1993 proposed rule, we received many insightful comments, which are set forth later in this preamble. In reviewing comments to the proposed rule, we agree that all program services should be evaluated using a consistent standard (75 percent), and are limiting the application of the 90 percent standard to case opening requirements in § 303.2(a) and case closure requirements in § 303.11. The requirements at § 303.2(b) regarding the standard, and the requirements at § 303.2(a) regarding the opening of a case will be evaluated using the 90 percent standard establishment of a case record and determination of necessary action on the case will be evaluated using the 75 percent. Therefore, we require that, in order to be determined to be in substantial compliance, States must have and use the procedures for providing applications and information and accepting applications set forth in § 303.2(a) and case closure requirements at § 303.11, which were effective October 1, 1990, in at least 90 percent of the cases reviewed for each criterion.

To reflect the changes discussed above, § 305.20(a)(2) provides that, for audits conducted for any period beginning on or after December 23, 1994, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

(1) Establishment of Cases, § 303.2(a); and

(2) Case Closure, § 303.11.

Under the case closure criteria, auditors will evaluate cases closed during the audit period to determine compliance with the requirements of § 303.11. It is important to recognize that States will be evaluated to determine whether closure of cases was appropriate. As explained in response to comments in the final rule governing Standards for Program Operations (54 FR at 32303), States are not required to close cases, however, and should a case which meets the criteria for case closure be left open, it would not count against the State for the purpose of determining compliance.

ii. *75 percent standard for providing services.* Section 305.20(a)(3) provides that, for audit periods beginning on or after December 23, 1994, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

(1) Collection and Distribution of Support Payments, including: Collection and distribution of support payments by the IV–D agency under §§ 302.32(b) and (f); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c)(1) through (6), and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under §§ 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under §§ 303.4 (d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33 (a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b), and (c) (1) through (6), and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State income tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c)(1) through (6), and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(5) Medical support, including: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b), and (c) (1) through (6), and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

In this final regulation, we have established a standard for expedited processes at §§ 303.101(b)(2) (i) and (iii), and corresponding audit criteria at § 305.20(a)(5) to measure the establishment of a support order and, when necessary, the establishment of paternity. These changes reflect the paternity establishment provisions of the OBRA '93. Since States that need to establish paternity and a support order often complete both activities at about the same time, and the new expedited processes standard covers both activities, we have combined into a single grouping the audit criteria we will use to evaluate State compliance with Federal requirements for establishment of an order and paternity establishment under the 75 percent audit standard. We believe that this change will further streamline the audit process.

Location Evaluated as Part of Services Provided. Under this final regulation, location is not listed as a separate criterion but is included under the paternity and support order establishment, enforcement, review and adjustment, and medical support criteria. The location function is not an end in itself, but an essential component of delivering program services. We do not believe that this diminishes the significance of the location function. On the contrary, it underscores the need to use all appropriate location sources in order to proceed with delivering the necessary services in the case. Moreover, it is illustrative of the transition to a more results-oriented, outcome-focused audit.

Thus, if a case requires establishment of a support obligation and the non-custodial parent's whereabouts are unknown, the State must meet the applicable location requirements at § 303.3 and, if the non-custodial parent has been successfully located, the requirements for support obligation establishment at §§ 303.4 (d), (e), and (f) and § 302.56 in any case reviewed for purposes of the audit. If the State does

not meet the location requirements in a case requiring support obligation establishment, it would be counted against the State in computing the efficiency rate for support obligation establishment and the audit findings would reflect that the State failed to substantially comply with the support obligation establishment requirements due, at least in part, to a failure to meet the location requirements. In response to our request for specific comments regarding the potential effect of evaluating locate as a component of other services rather than as a specific service, we received valuable and constructive input, which is described more extensively in the Response to Comments section later in this preamble.

If a support obligation cannot be established because the parent from whom support is sought is not located, even though the State met all other location requirements (i.e., checked all appropriate sources and repeated location attempts) this would not be counted against the State. There is, currently, a perceived misunderstanding that States must obtain a successful outcome in a case in order to receive credit for having worked that case. We would like to clarify that if a State meets all Federal requirements, including timeframes, with respect to a particular case but cannot locate the non-custodial parent or alleged father, for example, the State would not be penalized for failure to provide the necessary service. Instead, we would credit the State with taking appropriate action.

Interstate and Non-AFDC Services as Part of Services Provided. Under this final regulation, the provision of services in interstate cases, and services to individuals not receiving AFDC or title IV–E foster care are included under the paternity and support order establishment, enforcement, review and adjustment, and medical support criteria. It is long-standing Federal policy that all appropriate services should be provided in all cases regardless of type (non-AFDC IV-D; interstate IV-D). Therefore, we believe that all types of IV-D cases (i.e., AFDC, title IV-E foster care, non-AFDC, and interstate) should be evaluated in a similar manner. In addition, the requirements unique to interstate and non-AFDC cases are not an end in themselves, but an essential component of delivering program services for such cases. Furthermore, these changes are illustrative of a transition to a more results-oriented outcome-focused audit.

Under this approach, States will still be held accountable for meeting requirements that are unique to interstate cases, §§ 303.7(a), (b), (c)(1) through (6) and (8) through (10), as well as functions and services otherwise covered by criteria under § 305.20 to determine whether the State is in substantial compliance with the requirement to provide appropriate services in an interstate case. Similarly, States will still be held accountable for meeting those aspects of § 302.33 unique to non-AFDC IV-D cases (i.e., §§ 302.33(a)(1) through (4)) to determine whether the State is in substantial compliance with requirements to provide services to non-AFDC individuals. These changes are also addressed in the response to comments section of this preamble.

Enforcement. Under this final regulation, use of some enforcement techniques would be mandatory in all appropriate cases in accordance with Federal requirements, i.e., wage withholding and submitting once a year all cases, in accordance with § 303.6(c)(3), to State and Federal income tax refund offset. States must take these actions in all appropriate cases, in accordance with § 303.6. Section 303.6(c)(3) requires annual submittal for income tax refund offset of all cases which meet the certification requirements under § 303.102 and State guidelines developed under § 302.70(b) for State income tax refund offset, and which meet the certification requirements under § 303.72 for Federal income tax refund offset.

Cases exist in which wage withholding is not available or appropriate because, for example, the obligated parent is self-employed, unemployed, or does not have a source of income subject to withholding; or the obligor and/or employer cannot be located. In these cases, if the non-custodial parent has been successfully located, some other enforcement technique, in addition to Federal and State income tax refund offset, must be used. States have discretion with respect to the use of other enforcement techniques (besides wage withholding and Federal and State income tax refund offset) as long as there is compliance with Federal regulations, State procedures, and guidelines developed by the State under § 302.70(b) which outline when it is inappropriate to use an enforcement technique.

Under this final regulation, for cases in which wage withholding cannot be implemented or is unavailable, States will receive credit, for audit purposes, for taking or attempting an enforcement action if they do any one of the following in accordance with § 303.6: Impose a lien against real and personal property under § 303.103; require the obligor to post security, bond, or other guarantee to secure payment of overdue support under § 303.104; make information available to consumer credit reporting agencies under § 303.105; withhold unemployment compensation under § 302.65; or request full collection services by the Secretary of the Treasury under § 303.71. A State will also receive credit for enforcement if it takes an enforcement action that is not specifically listed above, if the action is consistent with Federal or State laws and procedures.

This final regulation emphasizes the use of wage withholding and income tax refund offset, which are often the most effective enforcement techniques, yet ensures that more difficult cases in which wage withholding cannot be utilized, are not ignored. For those cases in which wage withholding is not implemented, it ensures that at least one enforcement action is taken in each case during the audit period. States are encouraged to implement several enforcement techniques concurrently, although they will not be penalized for failure to do so.

iii. *Credit for providing services.* Paragraph (a)(4) indicates that, with respect to meeting the 75 percent standard under § 305.20(a)(3), for any audit period beginning on or after December 23, 1994:

(1) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c) (4) through (6), (8) and (9); location and support order establishment under §§ 303.3(b) (3) and (5), and 303.4(d), if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(2) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c) (4) through (6), (8) and (9); location and review and adjustment of support orders contained in §§ 303.3(b) (3) and (5), and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures in § 303.8, and the order is adjusted, or a determination is made, as a result of a review that an adjustment is not appropriate, during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action for review and adjustment of orders in that case for audit purposes.

(3) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c) (4) through (6), (8) and (9); location and wage withholding in §§ 303.3(b) (3) and (5), and 303.100, if wage withholding is appropriate and implemented in a particular case, and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(4) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c) (4) through (6), (8) and (9); location and enforcement of support obligations in §§ 303.3(b) (3) and (5), and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

When a State is considered to have taken an appropriate action in a case for audit purposes, as stated above, the case would count towards meeting the 75 percent standard in § 305.20(a)(3) for paternity and support order establishment, review and adjustment of support orders, and enforcement of support obligations, as appropriate. Under paragraph (a)(4), a State would receive credit in such an instance for taking an action in a case even if relevant timeframes are missed. These timeframes include the timeframe for establishment of cases under § 303.2(b); timeframes for location in §§ 303.3(b) (3) and (5); and timeframes for provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c) (4) through (6), (8) and (9).

These credits are another indication of the transition to a more results-oriented audit. We believe that, for audit purposes, a State should not be penalized when intermediate timeframes are missed in a case if a successful result is achieved within the audit period (i.e., paternity and a support order are established, an order is adjusted or determined to be not needed, wages are withheld, or a collection is made), since these results are the primary goals of the child support enforcement program.

Furthermore, we believe that this position is responsive to the concerns of States that missing an interim timeframe may create a disincentive to work the case through to completion of the action.

However, under this final regulation, if interim timeframes are not met in a case, States would only get credit for taking an appropriate action if the action is successfully completed, not simply attempted, *within the audit period*. For example, if timeframes are missed in a case, a State can get credit for: Paternity and order establishment, only if paternity (if needed) and a support order are established; wage withholding, only if withholding is implemented and wages are withheld as a result; and support order adjustment, only if the order is adjusted or determined to not require adjustment.

We emphasize that a State has to successfully complete an action in order to receive credit in a case *only if timeframes are not met in the case*. If, in a particular case, a State complies with the requirements, including the timeframes, the State will get credit for taking an action in that case even if the action is not successful.

Collection of unpaid support through enforcement is a major goal of the program. As a result, when enforcement timeframes are missed, the State will be credited for wage withholding, or, if wage withholding is not appropriate in a given case, the use of some other appropriate enforcement technique available under State law, in addition to the Federal and State income tax refund offset, if such action results in a collection during the audit period. Wage withholding is subject to specific timeframes in § 303.100. State and Federal income tax refund offset, also a highly efficient and effective procedure, are not subject to similar case processing timeframes. Other enforcement techniques are subject to the general timeframe in § 303.6.

Since some enforcement techniques, such as liens and consumer credit reporting, may not immediately result in collections and because it is difficult to determine when and if these actions have been successful in collecting support, States will only be credited when a collection is received. In successful wage withholding cases, collections usually occur almost immediately, so it is easy to determine when it has been successfully completed.

We emphasize that all timeframes, including those for paternity and support order establishment, review and adjustment, and wage withholding, are still Federal requirements that States must meet. However, as described above, States may receive credit for taking an action under § 305.20(a)(4) when the outcome is successful even if timeframes are missed in a case.

c. *Expedited processes.* Paragraph (a)(5) requires that, for audit periods beginning on and after December 23, 1994, the State must meet the requirements for Expedited Processes under § 303.101 to be in substantial compliance. Prior to the issuance of this final rule, the compliance percentages contained in the expedited processes regulation were used to evaluate State performance rather than the 75 percent audit standard. The new compliance percentages contained in the expedited processes regulation revised in this final rule will be evaluated in the same manner. Therefore, the evaluation of the expedited processes compliance percentages discussed earlier in this preamble will continue to be separated from the service-related category which is evaluated using a 75 percent standard.

d. *Performance indicators.* Paragraph (a)(6) continues to require that the State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section.

Paternity Establishment Percentage Standard—Proposed § 305.97

Section III of the Family Support Act of 1988 amended section 452 of the Act by adding a new paternity establishment standard, at subsection (g), that States must meet for any fiscal year beginning on or after October 1, 1991. In the proposed rule, we proposed to add a new § 305.97, titled Paternity Establishment Percentage Standard, which would set forth the requirements States must meet in order to be determined to be in substantial compliance with title IV–D of the Act. However, because of recent statutory changes to the standard, it will be dealt with separately and is not included in this final rule. As part of the OBRA '93 (Pub. L. 103–66), Congress revised the paternity establishment standard, including the description of data needed to calculate the ratio. Subsequently, Congress enacted Pub. L. 103–432 which included technical amendments that corrected the description of the terms of the standard.

Performance Indicators—§ 305.98

Section 305.98(c) is revised to indicate that OCSE continues to use the procedures and audit criteria in that paragraph to measure State performance. Paragraph (d) is revised to state that the performance indicator scoring system will be described and updated periodically by the Office (i.e., OCSE). We will publish any changes to the scoring system in the **Federal**

Register in advance of their effective date.

Notice and Corrective Action Period—§ 305.99

Former § 305.99(b)(2) provided that the notice of substantial noncompliance identify any audit criteria listed in §§ 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). Revised § 305.99(b)(2) provides that the notice of substantial noncompliance identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in (a)(3)]. This change replaces the reference to §§ 305.20 (a)(2), (b)(2) or (c)(2) with § 305.20(a)(3).

Response to Comments

1. Paternity Establishment Provisions.

In response to the Notice of Proposed Rulemaking published November 29, 1993, in the **Federal Register** (58 FR 62599), we received over 60 comments from representatives of State and local IV–D agencies, national organizations, advocacy groups, and private citizens. Their comments and our responses are as follows:

General Comments

1. *Comment:* One commenter requested that OCSE liberally grant waivers from the new requirements if a State has laws, processes, or procedures which achieve the aims of the statutory paternity provisions under OBRA '93.

Response: Procedures regarding exemptions are delineated at § 302.70(d) and OCSE–AT–88–19. (Although the procedures in OCSE–AT–88–19 refer to former expedited process requirements, these procedures may be used until they are updated to reflect the new expedited process requirements). A State may apply for an exemption from adopting any of the required State laws at § 302.70(a) by submitting a request for an exemption to the Federal Regional Office. The Secretary will grant a State (or political subdivision in the case of expedited process requirements) an exemption for a period of up to three years in the limited instances where the State demonstrates that compliance would not increase the effectiveness and efficiency of its IV–D program.

2. *Comment:* One commenter suggested that the statutory effective date should apply only to the Federal statutory provisions, and that States should be given additional time, after the issuance of final regulations, to comply with any Federal regulatory requirements implementing the statutory provisions. According to this commenter, the effective date of any regulatory requirements based upon the Federal statute should be linked to the end of each State's next legislative session following publication of the final rule.

Response: We are *not* linking the effective date of this regulation to each State's next legislative session following publication of this rule. The statutory effective date, which is linked to States' legislative sessions, applies to statutory requirements, even if the statutory effective date occurred prior to publication of these final regulations. If the Federal statutory effective date for a State occurs after publication of these regulations, these regulations will not be effective until the statutory effective date. Furthermore, these regulations allow States until January 1, 1995 (or the Federal statutory effective date, if later) to implement hospital-based programs statewide. Therefore, we do not believe additional implementation time for regulatory requirements is necessary.

3. *Comment:* One commenter suggested that we retain the list of effective dates, previously at § 302.70(a), for required State laws.

Response: To simplify the regulatory language, we have deleted effective dates of IV–D State plan requirements previously listed in § 302.70(a). The effective dates had been listed to differentiate between requirements that became effective at different times. However, since all requirements listed at § 302.70(a) are now effective, we believe it is unnecessarily cumbersome to enumerate all the various effective dates in the regulation. Each IV–D State plan requirement, including the new paternity ones, remains effective on the date indicated by the statute or implementing regulation.

Simple Civil Process for Voluntarily Acknowledging Paternity—Sections 302.70(a)(5)(iii) and 303.5(a)

a. *General Requirements, Rights and Responsibilities, and Due Process.*

1. *Comment:* Several commenters questioned why requirements regarding general voluntary acknowledgment procedures are not as detailed as the requirements regarding hospital-based voluntary acknowledgment programs.

Response: Regulations regarding the general voluntary acknowledgment process are not as detailed as those covering hospital-based programs. The reason for this differentiation is that the vast majority of States, if not all States, had already implemented general voluntary acknowledgment procedures prior to the passage of OBRA '93. Given that no national problem has been identified regarding these existing State procedures, we do not want to impede their successful, ongoing operation. For example, States have already developed forms and materials that meet the requirements of State law and that have withstood judicial review. We do not want to impose detailed Federal requirements that would unnecessarily force States to develop new forms and materials.

We do, however, encourage States to reexamine their existing voluntary acknowledgment procedures to ensure that they are simple, provide sufficient information to the parties, and are regularly used. The voluntary acknowledgment process should be available at any time to fathers who want to voluntarily acknowledge paternity. Ideally, States will allow fathers multiple opportunities to voluntarily acknowledge at any stage in the process. Even if a man is initially reluctant to voluntarily acknowledge parentage because he is unsure whether he is actually the father, he may be willing to do so after receiving genetic test results which indicate a high probability of paternity.

While we have tried to avoid unnecessary Federal intervention regarding general voluntary acknowledgment requirements, there is a need for detailed Federal requirements regarding hospital-based programs. While some States had organized hospital-based programs prior to passage of OBRA '93, most of these programs were not statewide in scope. Therefore, in many parts of the country such programs do not yet exist or are not well-established. Detailed Federal requirements should help to ensure that such programs are properly implemented. As several commenters on the proposed rule pointed out, States which have implemented hospital-based programs have found that programs are most effective where trained staff and explanatory materials are available to assist the parents.

In addition, the special circumstances of a hospital environment warrant detailed Federal oversight. For medical records staff and health care workers in hospital-based programs, providing voluntary acknowledgment services is only an ancillary activity to their main responsibilities. Hospital staff may not be as familiar with paternity and child support issues as IV–D or court staff involved in voluntary acknowledgment procedures outside of hospitals.

Furthermore, as several commenters pointed out, during the hours following birth, the mother may be in physical pain, mentally exhausted or preoccupied, and inundated with

information regarding the health and care of her newborn child. Hospital staff providing voluntary acknowledgment services may not be aware of salient issues in a case, such as domestic violence. (When voluntary acknowledgments are made outside of the hospital, child support personnel may be more likely to learn of such issues during initial interviews with the woman).

In light of these special circumstances, the detailed requirements at § 303.5(g) are designed to ensure that the voluntary acknowledgment process in hospitals is truly voluntary and appropriate, and that both the mother and alleged father have adequate information to make an informed decision.

2. *Comment:* Many commenters recommended detailed and specific Federal requirements regarding the explanation of rights and responsibilities and due process safeguards.

Response: We agree with commenters about the importance of this issue. Under regulations at § 302.70(a)(5)(iii), States are required to explain to both parents the rights and responsibilities of acknowledging paternity. The explanation should describe the rights and responsibilities, including the duty to support the child financially, that each party will assume as a result of signing the acknowledgment. It should also describe rights that each party may be giving up by signing the acknowledgment (e.g., right to genetic testing). These rights and responsibilities will vary by State, depending on State law.

For out-of-hospital acknowledgments, as long as the explanation meets State due process requirements, it may be verbal or in writing. However, we recommend that this disclosure of rights be provided in a written format that is clear and easily understood. Furthermore, we encourage States to place this written explanation on the acknowledgment form itself. As one commenter indicated, if a party later challenges the validity of an acknowledgment, a written explanation of rights and responsibilities *on the form* will provide evidence that notification occurred. Section 302.70(a)(5)(iii) also requires a State to meet any due process requirements necessary under State law and court rulings. (Federal requirements regarding hospital-based programs are somewhat more prescriptive due to the special circumstances of a hospital environment as previously discussed. Hospital-based program requirements are discussed in greater detail later in this preamble).

However, consistent with past policy, we are not mandating detailed Federal due process requirements. Generally, a State is in a better position than the Federal government to determine the exact nature of such requirements in light of the State's particular circumstances. As one commenter stressed, a State needs to tailor its requirements to address the legal effect of the acknowledgment under State law—e.g., whether the acknowledgment creates a rebuttable or conclusive presumption. States' due process requirements also vary depending on State law and court rulings. However, because of the importance of the due process and rights and responsibilities issue, OCSE is committed to providing technical assistance, within its available resources, including sharing sample forms and materials from other jurisdictions, in order to assist States.

We also encourage States to consider, for both in-hospital and out-of-hospital acknowledgments, a number of suggestions recommended by commenters, including providing: Both a verbal and a written description of the rights, responsibilities, and consequences resulting from acknowledging paternity; a clear, written explanation of the legal significance of a paternity acknowledgment under State law; a written notice that the parties may wish to seek legal advice prior to signing the acknowledgment; a written statement explaining that completion of the form is voluntary; procedures requiring the acknowledging parents to sign a statement indicating that they understand their rights and responsibilities; and training of staff and making IV–D agency staff available in person or by telephone to ensure that acknowledgments are voluntary and completed only after parents understand the consequences.

3. *Comment:* Several commenters argued that special protections are needed, as a part of both in-hospital and out-of-hospital voluntary acknowledgment procedures, for cases involving illiterate, non-English speaking, mentally incapacitated, blind, or hearing-impaired persons.

Response: We agree that special protections may be needed in such cases. However, just as a State generally has discretion regarding due process safeguards in "regular" cases, we are also giving States discretion in cases involving special circumstances. This allows each State to formulate policies which address its own particular requirements, including case law, regarding due process. States, IV–D agencies, and birthing hospitals are in the best position to determine the details of how to respond to special circumstances in their State's population or a facility's service area (e.g., languages other than English in which to publish materials and forms).

Despite this discretion, we encourage and expect States and IV–D agencies to address the special circumstances mentioned by commenters, as necessary, by setting appropriate policies, developing materials, and providing training to both hospital-based program and IV–D staff. As commenters cautioned, acknowledgments in such cases may be challenged if appropriate safeguards are not followed. We believe that States have already shown sensitivity to these special circumstances and there is no need for direct Federal intervention. For example, several States have developed paternity establishment materials and forms in languages other than English.

4. *Comment:* Several commenters suggested the need to include provisions regarding custody and visitation as part of the acknowledgment process. Some commenters suggested that parents, when given the opportunity to voluntarily acknowledge paternity, ought to be given the chance to complete forms regarding custody and visitation. Another commenter suggested that if the alleged father acknowledges paternity at the hospital, a custody order should also be entered for the mother at the same time to protect the mother's parental rights.

Response: We are not mandating requirements regarding custody and visitation because the paternity provisions of OBRA '93 and the other provisions of title IV–D of the Act do not address custody or visitation issues, and these are essentially State matters. However, when giving the parents the opportunity to voluntarily acknowledge paternity, we would also encourage that both parents receive an explanation, either in writing or verbally, about the potential impact of an acknowledgment under State law on custody and visitation.

b. *Acknowledgment Form.*

1. *Comment:* We received numerous comments regarding the proposal to require that States use a standard acknowledgment form incorporating certain minimum elements. Some commenters objected to the mandated use of an acknowledgment form and questioned whether it would prohibit States from using other, previously-established methods for obtaining voluntary acknowledgments.

Other commenters expressed concern about the specific elements that we proposed the forms should include

Commenters objected to mandating inclusion of: (1) Filing instructions because the instructions would not be applicable to all situations, (2) a line for the parents' social security numbers due to privacy concerns, and (3) parents' addresses due to the transitory nature of addresses. On the other hand, several commenters suggested that the form contain both the parents' and child's dates of birth—data elements that we had not proposed to require. Other commenters maintained that mandating any minimum form elements was unduly restrictive and that States should be allowed to design their own forms.

Response: In response to commenters' concerns, we are not mandating use of a uniform acknowledgment form. As stated in the preamble to the proposed rule, mandating a form with minimum elements was intended to standardize interstate case processing. However, based on comments to the proposed rule, it is clear that our proposal would not have solved interstate problems. Some States use voluntary acknowledgment procedures, other than an acknowledgment form, that do not contain the uniform elements. Furthermore, because there is no agreement among States regarding what the elements of an acknowledgment form should be, State forms would have continued to vary in many respects even if some uniform elements were mandated. (Differences in State forms or procedures should not be an issue if an acknowledgment creates a determination of paternity subject to full faith and credit, but may be an issue if an acknowledgment does not create a determination of paternity). As one commenter pointed out, in order to avoid interstate problems, we would have to mandate use of a standardized national form. However, we believe a standardized national form would unnecessarily disrupt many States' long-standing and successfully-operating voluntary acknowledgment procedures.

Although we are not mandating the use of a form with minimum elements, States must have procedures for a simple civil process for voluntarily acknowledging paternity in accordance with § 302.70(a)(5)(iii). We anticipate that most States will use some type of acknowledgment form, and we encourage States to include on the form data elements that provide valuable locate and identifying information. These elements may include: Parents' social security numbers, dates of birth, and addresses. If a State's form includes the social security numbers of the parents, the recording of voluntary acknowledgments might be a way of obtaining social security numbers from parents as required during the birth registration process by section 205(c)(2)(C)(ii) of the Social Security Act. OCSE plans to provide States with examples of voluntary acknowledgment forms used in various jurisdictions around the country.

2. *Comment:* Several commenters objected to the proposed requirement that a voluntary acknowledgment be signed by both parents. This provision of the proposed rule would have also required that the parents' signatures be authenticated by a notary or witness(es). According to commenters, it would be burdensome, time-consuming, costly, and unnecessary to have both parents sign the *same* form, particularly if the parents live in different States. These commenters noted that frequently in IV–D cases the mother is not present when the father acknowledges paternity but that she has previously named the acknowledging man as the father in writing. As one commenter suggested, the proposal may have made it necessary for the IV–D agency to find the mother once the man acknowledged, even if she had previously named the man as the father, to have her sign in front of a notary or witness the same acknowledgment form that the father signed. In addition, commenters noted that, under some existing State laws, a man can voluntarily acknowledge paternity without the mother's consent (only under certain circumstances in some States; e.g., if genetic test results create a presumption of paternity, or the mother is deceased or mentally incapacitated).

Response: In response to commenters' concerns, for *general voluntary acknowledgment procedures*, we are not requiring that both parents sign the same form in front of a notary public or witness(es). We want to avoid unnecessary Federal interference with State's previously-established and successfully-operating voluntary acknowledgment procedures. We note, however, that if an acknowledgment form with signature lines for both parents contains space for a notary or witness to authenticate each signature separately (as recommended by one commenter), the parents do not necessarily have to sign the form at the same time.

This rule does compel the State to require that a voluntary acknowledgment obtained through a *hospital-based program* be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es). We are including this requirement at § 303.5(g)(4), rather than at § 302.70 as in the proposed rule, since we are limiting its scope to hospital-based programs. Regarding mandating the use of notaries, we believe such a requirement would unnecessarily interfere with State practice and create problems in hospitals where notaries may not always be readily available.

Since the mother will be present in cases in which the father signs a voluntary acknowledgment at the hospital, it is not burdensome to require that both parents sign in such cases (although they need not both sign the form at the same time). Furthermore, we want to ensure that the process at the hospital is truly voluntary and that an acknowledgment is made only when both parents agree about the man's paternity. Even if a man is willing to acknowledge paternity, the mother may deny that he is the father, or may not want paternity to be established (due to domestic violence or other circumstances). Hospitals should not have to mediate disputes or pursue cases where the parties disagree about the man's paternity. If a party in such a case wishes to establish paternity without the cooperation of the other party, he or she could contact the IV–D agency or a private attorney.

States can meet the requirements of § 303.5(g)(4) by developing and mandating the use of a form for hospital-based programs which contains signature lines for both parents and a notary public or witness(es).

c. *IV–D Agency Activity.*

1. *Comment:* One commenter suggested that the proposed requirement at § 303.5(a), requiring the IV–D agency to offer the alleged father the opportunity to acknowledge paternity in IV–D cases in which paternity has not been established and a voluntary acknowledgment has not been obtained, was overly broad. The commenter suggested that there are cases, particularly under some State laws, where it is inappropriate to pursue a voluntary acknowledgment—e.g., cases where the alleged father is a minor or lacks the requisite mental capacity.

Response: We revised this provision to require that the IV–D agency offer the alleged father, *as appropriate*, the opportunity to acknowledge paternity. If a IV–D agency determines that it would not be appropriate to offer the alleged father an opportunity to voluntarily acknowledge paternity, it must: (1) Document in the case record the specific reason it is inappropriate to seek an acknowledgment, and (2) attempt to establish paternity by legal process established under State law.

Adding "as appropriate" allowed us to delete the phrase "and a voluntary acknowledgment has not been

obtained" in the proposed introductory language of § 303.5(a) describing the applicability of the provision. Since the IV–D agency acts in accordance with § 303.5(a) "as appropriate", the provision now applies broadly to any case "in which paternity has not been established". Seeking a voluntary acknowledgment in a case where an acknowledgment has previously been obtained would not be appropriate.

2. *Comment:* One commenter asked if mailing an acknowledgment form to the alleged father's last known address with no verification of receipt would meet the requirement at § 303.5(a) for providing the alleged father the opportunity to voluntarily acknowledge paternity.

Response: In order to satisfy this requirement, IV–D staff may contact the alleged father by telephone, written notice, or in person as appropriate under the circumstances and State law. Written notice may be given by mail, personal service, or other means; however, it must be addressed specifically to the individual alleged father. We strongly encourage that language in written notices be "reader-friendly": i.e., clear and easy to understand. The IV–D agency should advise the man that the mother has named him as the father of the child, describe the procedures for voluntarily acknowledging paternity, and advise him of his rights and responsibilities. The IV–D agency must document in the case record when and how the alleged father is sent or given notice of the paternity action and the opportunity to voluntarily acknowledge.

Mailing an acknowledgment form to the alleged father's last known address will satisfy this requirement, if the man can acknowledge paternity by completing and returning the form. However, the IV–D agency must meet the requirements mentioned above (advising the man that the mother has named him as the father of the child, describing the procedures for voluntarily acknowledging paternity, and advising him of his rights and responsibilities) via the form, attached written materials, or other means.

Although mailing a form is sufficient to meet the requirement at § 303.5(a), we encourage States to make additional efforts to facilitate acknowledgments. For instance, several States ask the father to come to the IV–D agency for a conference or hearing where he may voluntarily acknowledge. The conference allows IV–D staff to explain, in person, the rights and responsibilities associated with the establishment of paternity. Designated agency personnel are available to witness or notarize signatures on voluntary acknowledgments.

If an alleged father refuses or is reluctant to voluntarily acknowledge paternity, States should encourage genetic testing. Men who are unsure, but willing to cooperate, will frequently consent to genetic testing. States could adopt procedures for conducting testing, if the alleged father consents, prior to a formal filing of an action to establish paternity with the court or administrative authority. Even in cases where the man is initially unwilling to voluntarily acknowledge, he may consent to genetic testing and subsequently acknowledge paternity if the test results show a high probability of paternity, without the need for a hearing or formal adjudication.

3. *Comment:* One commenter requested clarification regarding whether the opportunity to voluntarily acknowledge could be given either before or after initiating legal action to establish paternity.

Response: The IV–D agency may meet the requirement at § 303.5(a) by offering the alleged father the opportunity to acknowledge paternity at any time—before or after initiating legal action to establish paternity. To clarify this, we have omitted the phrase "if he fails to voluntarily acknowledge paternity" (which was included in the text of the proposed § 303.5(a)(2)), since it implied that the IV–D agency should seek a voluntary acknowledgment before attempting to establish paternity by legal process. Although we generally encourage States to offer the alleged father the opportunity to acknowledge before initiating legal process, we realize that some men will flee or otherwise avoid service of process if notified of the paternity issue prior to service.

If a IV–D agency offers the man the opportunity to voluntarily acknowledge paternity prior to the initiation of legal action, the IV–D agency may want to inform the alleged father at the time it provides him an opportunity to acknowledge that formal paternity establishment action will begin if the alleged father does not acknowledge within a specified timeframe. On the other hand, a IV–D agency may choose to combine service of process necessary for a legal paternity determination with the offer of the opportunity to voluntarily acknowledge. For example, some States serve a notice or claim of alleged paternity and support obligation on the putative father, informing him of the opportunity to voluntarily acknowledge paternity. If the man fails to voluntarily acknowledge, the State can then adjudicate paternity based on the initial notice.

Hospital-Based Paternity Establishment Programs—Sections 301.1, 302.70(a)(5)(iii)(A), 303.5 (g) and (h), 304.20(b)(2), and 304.23(d)

a. *General Requirement; State Law.*

1. *Comment:* One commenter questioned whether hospital-based programs would be effective, particularly since mothers of newborns stay in the hospital for such a short period of time.

Response: Prior to the enactment of OBRA '93, about half of the States had already developed hospital-based programs to obtain voluntary acknowledgments of paternity (although often on less than a statewide basis). Even some hospitals in States without proactive, organized programs have, for years, accepted voluntary acknowledgments of paternity from maternity patients and alleged fathers. Typically, in an organized program, trained hospital employees provide information about paternity establishment to the parents, inform them of their rights, and give the putative father the opportunity to voluntarily acknowledge paternity. Such programs have been quite effective in obtaining voluntary paternity acknowledgments; some hospital-based programs have successfully obtained voluntary acknowledgments for about 40 percent of their out-of-wedlock births. In developing these regulations, OCSE met with officials from established hospital-based programs in several States.

The experience of States indicates a father of a child born to an unmarried mother is more likely to be present and to admit paternity during the time surrounding birth than later on. Early paternity establishment reduces location difficulties and administrative costs which can occur if paternity establishment is delayed. The earlier paternity is established, the sooner the child will have access to the father's medical benefits, medical history information, a legal relationship with the father, child support, and other benefits resulting from paternity establishment.

To address the fact that mothers of newborns stay in the hospital only a short period of time after birth, States and their hospital-based programs should attempt to offer paternity acknowledgment services during peak hospital visiting hours, which may be in the evening, to ensure that all unmarried parents have the opportunity to voluntarily acknowledge paternity In addition, States are encouraged to

provide information on the importance of paternity establishment prior to the birth of the child (e.g., at prenatal clinics and maternal and child health programs).

2. *Comment:* Some commenters expressed concern that the proposed January 1, 1995 effective date for statewide implementation of the hospital-based program would be difficult to meet. One commenter suggested that OCSE provide training and technical assistance to help States meet this deadline. Commenters pointed out that in a few States the first legislative session after enactment of OBRA '93 will be in 1995.

Response: With one adjustment, we are keeping the effective dates as proposed. As required by the Federal statute, States must have laws, regulations and/or binding procedures required under 302.70(a)(5)(iii)(A) in place on October 1, 1993 (or if legislation is required, by the beginning of the first calendar quarter after the close of the first regular session of the State legislature that begins after August 10, 1993).

Under § 303.5(g)(1), the hospital-based programs must be operational in birthing hospitals statewide no later than January 1, 1995. Given the increasing number of out-of-wedlock births, we believe Congress intended these hospital-based programs to be implemented as quickly as possible, and we cannot justify further delay. Depending on State circumstances, the January 1, 1995 effective date gives States over a full year after the Federal mandate's effective date to gear-up to a statewide program. In the preamble to the proposed rule (58 FR 62599, 62603), we encouraged States to begin implementing their hospital-based programs immediately, even if a State law had not yet passed, by contacting hospitals and appropriate agencies and developing forms, written materials, and training procedures.

However, as commenters pointed out, OCSE cannot impose a regulatory effective date that is stricter than the statutory one. Therefore, we have added the phrase "unless Federal law governing the effective date gives the State additional time" to the January 1, 1995 effective date at § 303.5(g)(1). This phrase only applies to States where: (1) the end of first regular legislative session beginning after enactment of OBRA '93 (on August 10, 1993) occurs after January 1, 1995, and (2) the State legislature needs to pass law regarding the hospital-based program in order for the State to comply with § 302.70(a)(5)(iii)(A). A State meeting these conditions will have until the effective date contained in Federal statute to implement its hospital-based program statewide. Such a State, however, must have both its law in place and have its hospital-based program operational statewide by the Federal statutory effective date. We encourage States to establish their hospital-based program and mandate participation by birthing hospitals through regulation or procedure with the full force and effect of law. However, if enabling State legislation is necessary, the State can proceed with implementation planning and arrangements concurrent with consideration of the legislation.

To facilitate the establishment of hospital-based programs, the IV–D agency may enter into agreements or contracts with birthing hospitals or other State agencies. (Some type of formal agreement is required in order to receive FFP for $20 payments per acknowledgment; see discussion below). A State could also contract with a private entity or organization to implement the hospital-based program. For purposes of Title IV–D State plan requirements, the State will still be liable for ensuring that the required process has been implemented. We encourage the State to work closely with the State hospital association; State staff who have implemented existing programs indicate the hospital association was a key player in implementation.

OCSE is committed to continuing to provide technical assistance to help States implement hospital-based programs quickly. To date, OCSE has sponsored a well-attended national conference for State agency personnel, published and disseminated "In-Hospital Paternity Establishment: A Resource Guide", and run feature stories in its nationally disseminated periodical, the *Child Support Report*, all of which addressed hospital-based program implementation issues.

3. *Comment:* Two commenters requested that the regulations include an enforcement mechanism regarding the participation of birthing hospitals.

Response: The statute did not include a Federal enforcement mechanism targeted directly at hospitals (such as a link to Medicaid or Medicare funding), and OCSE does not have the authority to establish such a mechanism by regulation.

However, a State must meet the hospital-based program requirement at § 302.70(a)(5)(iii)(A) as a condition of IV–D State plan approval. Each State's title IV–D plan must be approved for the State to receive Federal financial participation in the operation of its Child Support Enforcement program. At a minimum, new § 302.70(a)(5)(iii)(A) requires State law, regulation, and/or binding procedure to compel all public and private birthing hospitals to participate in hospital-based programs as defined in § 303.5(g)(2). At State option, State law may include an enforcement mechanism for dealing with noncompliance by hospitals.

4. *Comment:* In the proposed rule, we suggested defining "birthing hospital" as a hospital that has a licensed obstetric care unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital. One commenter argued that this proposed definition was too restrictive and did not account for the variety of licensing procedures used by States. According to the commenter, at least one State licenses hospitals generally, not according to whether they provide birthing services.

Response: We have changed the definition of birthing hospital at § 301.1 from what was originally proposed. A birthing hospital is now defined as a hospital that has an obstetric care unit or provides obstetric services, or a birthing center associated with a hospital. If a State licenses hospitals according to whether they have obstetric units or provide obstetric services, or if a State licenses birthing centers, the State may use the list of licensed entities to determine in which facilities hospital-based programs should be established.

Since we do not believe programs should be mandated in hospitals (such as geriatric hospitals) that do not provide maternity services, we have limited the hospital-based program requirement to hospitals that either have an obstetric care unit or that provide obstetric services. In the definition of birthing hospital, we also include birthing centers associated with a hospital. A birthing center is a facility physically located outside a hospital that provides maternity services. Generally, such centers use midwives and provide services for women who expect no complications during birth. Frequently, a hospital will provide back-up services to a birthing center if complications develop. Since in some localities, a significant number of births occur in birthing centers, we believe voluntary acknowledgment programs should be established in such centers that are associated with hospitals.

5. *Comment:* One commenter asked how the Federal OCSE would monitor State compliance with the hospital-based program requirements.

Response: Section 454(20) of the Act requires that the State IV–D plan

provide that the State shall have in effect all the laws required under the mandatory procedures established in section 466 of the Act. Since the requirements for hospital-based programs are part of the mandatory procedures set forth in section 466, States must demonstrate conformity with these requirements as a condition for having an approved State IV–D plan. As a condition of State plan approval, States must have a law (or procedure, rule, or regulation with the force of law) providing for a hospital-based program and requiring that all public and private birthing hospitals participate in the program in accordance with § 302.70(a)(5)(iii)(A). In addition, as part of the State plan approval process, States will be asked to certify that hospital-based programs are operational in birthing hospitals statewide no later than January 1, 1995 (unless Federal law governing the effective date gives the State additional time) in accordance with § 303.5(g)(1). States failing to demonstrate conformity with these requirements will be subject to State plan disapproval procedures outlined in OCSE–AT–86–21. Non-conformity could result in the suspension of all IV–D funding as well as loss of a portion of title IV–A funding to the State.

b. *Elements of a Hospital-Based Program.*

1. *Comment:* Numerous commenters recommended that Federal hospital-based program requirements include detailed and specific provisions regarding due process safeguards and the explanation of rights and responsibilities. For example, some commenters suggested federally-mandated training protocols, and safeguards to protect the mother, particularly in cases involving domestic violence.

Response: As discussed earlier in response to comments, although we agree with the importance of affording due process and explaining rights and responsibilities, we have tried to avoid overly prescriptive Federal requirements that would unnecessarily disrupt or interfere with the operation of existing, successfully-functioning programs.

However, OCSE is committed, within its available resources, to offering technical assistance and "best practices" regarding forms, written materials, and training procedures. Moreover, Federal requirements regarding hospital-based requirements are somewhat more detailed than the general voluntary acknowledgment requirements, due to the special conditions, discussed earlier, surrounding hospital-based programs.

Under § 303.5(g)(2)(i), a hospital-based program must provide to both the mother and alleged father, if he is present in the hospital: (A) Written materials about paternity establishment, (B) the forms necessary to voluntarily acknowledge paternity, (C) a written description of the rights and responsibilities of acknowledging paternity, and (D) the opportunity to speak with staff, either by telephone or in-person, who are trained to clarify information and answer questions about paternity establishment.

The written materials about paternity establishment can be brochures, pamphlets, or similar materials that describe the benefits of paternity establishment and the consequences of a voluntary acknowledgment. Some States have begun using informational films or videos, in addition to written materials. The State may want to include a discussion of the potential impact of an acknowledgment on custody, visitation, and adoption.

The description of rights and responsibilities may be a separate document or be included on the other written materials or forms. However, we encourage States to include the description on the form itself to serve as proof that notice of the rights and responsibilities was provided in the event the acknowledgment is later challenged. The description should list the rights each party is conceding by signing the acknowledgment. It should also describe the rights and responsibilities, including the duty to support the child financially, that each party will assume as a result of signing the acknowledgment. These rights and responsibilities will vary by State, depending on State law.

In accordance with § 303.5(g)(5), the State must provide the written materials, written description of rights and responsibilities, and acknowledgment forms to the birthing hospitals for distribution. The materials should be written in clear, easily understandable terms. The State is responsible for ensuring that birthing hospitals have an adequate supply of these items to distribute to unmarried mothers and alleged fathers upon birth of a child. Hospitals already distribute a variety of materials and forms to patients and can incorporate paternity materials and forms into their existing distribution procedures.

Under § 303.5(g)(4), the State must require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es). Therefore, an acknowledgment of paternity cannot be made in the hospital unless both the mother and the alleged father agree to acknowledge the man's paternity. The form used for acknowledging paternity in a hospital-based program should contain lines for both parents' signatures and authentication by a notary or witness(es).

Under § 303.5(g)(2)(iii), a hospital-based program must also afford any additional due process safeguards necessary under State law, court rulings, and special circumstances. We encourage States to work with hospitals to ensure that the voluntary aspect of the program is promoted and maintained. Neither the mother nor the father should be pressured into signing acknowledgments.

One way of ensuring that the process remains voluntary is through training of appropriate personnel. Under § 303.5(g)(6), the State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the hospital-based program. States may use classroom sessions, written instructions or handbooks, audio or video tapes, technical assistance provided via telephone, or other means to meet this requirement. Regardless of the method or combination of approaches, the State should ensure that staff, as they assume the responsibility, are instructed in the operations of the program. One State with an existing program has provided formal training every few years, while providing technical assistance and guidance via telephone and written instructions to supplement the training sessions. Another State is developing a videotape for training hospital-based program staff. OCSE plans to share knowledge of materials and experiences regarding training protocols and procedures.

Finally, we encourage States to consider other safeguards suggested by commenters as a means of protecting women in cases potentially involving domestic violence. These include training workers to recognize possible domestic violence, and talking with the mother and alleged father separately so that the mother can raise any concerns privately and discreetly.

2. *Comment:* Several commenters objected to the proposed requirement that a hospital-based program provide to both the mother and alleged father, if he is present in the hospital, the opportunity, prior to discharge from the hospital, to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment

The commenters suggested that, since mothers usually stay in the hospital only a short time after birth and the alleged father may only appear briefly at the hospital, it is unrealistic to expect hospital or IV–D workers to be able to talk with all parents about paternity establishment prior to discharge, particularly during weekend or evening hours. Some commenters also expressed concerns about the ability and propriety of hospital workers to respond to complex legal questions.

Response: In response to commenters, we have *not* included the phrase "prior to discharge" in the final requirement at § 303.5(g)(2)(i)(D). Therefore, a hospital-based program must give parents an opportunity to talk with staff, but not necessarily prior to discharge. The staff could either be hospital staff (e.g., medical social workers, medical records technicians, or medical provider staff), IV–D, or other agency staff. Most existing programs use hospital staff.

To meet this requirement, a hospital-based program must: (1) Have staff in the hospital to talk with parents in person, *or* (2) provide written materials with a telephone number for State agency (IV–D or other agency) personnel that the parties may contact for additional information. A hospital-based program may utilize both of these approaches.

We encourage hospital-based programs to have staff in the hospitals available to talk with the parties in person. Each program should make staff available, especially during evening and weekend visiting hours, to ensure that all unmarried mothers and alleged fathers present at the hospital are afforded an opportunity to acknowledge paternity. Notaries public or witnesses (designated hospital staff in some ongoing programs), as required under State law, should also be available to authenticate acknowledgments in the hospital. Staff can answer simple questions and assist parents in completing the forms. However, as commenters pointed out, hospital staff may not be able to answer legal questions regarding paternity establishment. In fact, at least one existing hospital-based program advises program staff not to answer legal questions; instead, the parents are given the telephone number of a State agency to contact. A hospital-based program may also want to advise parents that, if they have such questions, they should contact a legal services agency or an attorney.

Some parents may not be able to reach State agency personnel via telephone, or may not decide to acknowledge, until after discharge from the hospital. Therefore, we recommend that acknowledgment forms include clear instructions that allow the parents to complete and mail an acknowledgment some time after leaving the hospital.

3. *Comment:* Numerous commenters requested clarification regarding whether a hospital-based program must seek a voluntary acknowledgment prior to the birth of a child.

Response: Regulations at §§ 302.70(a)(5)(iii)(A) and 303.5(g) require hospital-based programs for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child to an unmarried woman in the hospital. The phrase "during the period immediately before or after the birth of a child" comes from section 466(a)(5)(C) of the statute. These provisions do not require a hospital-based program to seek a voluntary acknowledgment prior to the birth of a child. A hospital-based program should not seek a completed acknowledgment prior to birth unless State law recognizes the validity of pre-birth acknowledgments.

However, regardless of whether a State's law recognizes pre-birth acknowledgments, the period prior to birth offers an opportunity to inform both parents about the value of paternity establishment and their rights and responsibilities. Several States have developed outreach programs in prenatal clinics and other facilities. These programs give parents the time and knowledge to make an informed decision, particularly since most mothers only stay a short period of time in the hospital after giving birth.

4. *Comment:* Several commenters suggested that genetic testing be required for all newborns as a means of determining or confirming their parentage and preventing fraudulent acknowledgments of paternity. Other commenters recommended expanding the role of hospital-based programs to include voluntary genetic testing services.

Response: We are not requiring genetic testing for all births as a means of preventing fraudulent acknowledgments. Under § 303.5(g)(4), a State must require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es). We believe the number of cases where *both* parties would be willing to make a false claim of paternity is very small. Furthermore, the cost of providing genetic testing as a condition of acknowledging paternity in all cases would be significant. Fraudulent acknowledgments could be challenged in court where genetic tests could, of course, be ordered.

Furthermore, we are not requiring hospital-based programs to offer the option of genetic testing as part of hospital-based programs. The statutory requirement for hospital-based programs does not include genetic testing, and we believe that imposing additional requirements will make statewide compliance by January 1, 1995 more difficult.

Although not a requirement, we encourage States to incorporate the opportunity for genetic testing into their hospital-based programs. A readily available testing capability may persuade additional fathers to voluntarily acknowledge or expeditiously resolve any doubts as to paternity. A few States have begun to offer genetic testing in hospitals. Another State routinely obtains stipulations in the hospital where both parties agree to undergo genetic testing at a later date.

c. *Withholding Services in Some Cases.*

1. *Comment:* Several commenters suggested that a hospital-based program should not have to provide services in cases where the mother is *considering* adoption (even though an adoption is not yet pending) or is otherwise reluctant to acknowledge the man's paternity.

Response: We have retained the requirement at § 303.5(g)(3) as proposed. This allows a hospital-based program to withhold services related to acknowledging paternity, when necessitated by State law, in cases where the mother or alleged father is a minor or a legal action (e.g., relinquishment of parental rights for purposes of adoption) is already pending. Some States may have laws which prohibit voluntary acknowledgments of paternity by minors, or the State may want hospital-based personnel to avoid interference in cases where a legal action is pending. Therefore, the hospital-based program is not required to provide services to the mother and alleged father in such cases, if provision of services is prohibited by State law. However, the services listed in § 303.5(g)(2) should be provided to other unmarried parents.

Certainly, if a mother is considering adoption (but action is not yet pending) or, for some other reason, does not want to acknowledge the man's paternity, she may decline to sign the voluntary acknowledgment. The in-hospital process is entirely voluntary, and an acknowledgment obtained through a hospital-based program requires the signatures of both parents. If the mother

does not wish to participate and declines to identify the father, no further action is required on the part of the hospital.

2. *Comment:* One commenter asked how the hospital will find out that circumstances in a particular situation permit paternity acknowledgment services to be withheld.

Response: Generally, hospitals will be able to obtain this information from the patient (if an adoption is pending) or from hospital records (if a termination of parental rights or other proceeding is pending). In other cases, hospitals may only learn of the circumstances after talking with both the mother and alleged father (e.g., if he is a minor).

3. *Comment:* Commenters asked if a hospital-based program must provide services in cases where the parents are not residents of the State, or in cases involving illegal aliens.

Response: An individual's residency or citizenship status may not be a basis for excluding the person from an opportunity to acknowledge paternity. A hospital-based program must provide services to unmarried parents regardless of whether they are nonresidents or illegal aliens. Paternity establishment is a service in the best interest of the child and the residency or citizenship status of the parents does not reduce the child's interest in having legal paternity established.

d. *Annual Assessment.*

1. *Comment:* Several commenters objected to the proposed requirement mandating an annual assessment of each birthing hospital's program. Commenters suggested the requirement was overly burdensome, was not necessary to determine a program's effectiveness, and would require data that are not readily available. Other commenters suggested that the intent and requirements of the provision needed clarification.

Response: We retained the assessment requirement in the final regulation. States must assess each birthing hospital's program on at least an annual basis. It is essential that a State not only establish hospital-based program procedures, but also follow-up to determine if such procedures are working. The intent of this requirement is not to establish performance quotas or to create pressure for hospitals to obtain acknowledgments, but rather to ensure that hospitals are actually operating programs. Staff turnover among hospital personnel or a depleted supply of forms or materials may disrupt or even suspend a hospital-based program's operation. The annual assessment will allow the State to detect whether such problems occur, and to take appropriate action (periodic staff training, regularly supplying new forms) to prevent them.

The annual assessment requirement does not mandate a formal investigation or audit. Rather, it simply requires States to examine data which, in most States, should be available without the need for a special data collection. At a minimum, the annual assessment must examine the number of acknowledgments received from each hospital. If the State makes payments to the birthing hospitals for each voluntary acknowledgment obtained, it should already have access to data regarding the number of acknowledgments per hospital. We encourage the State to consider the number of acknowledgments as a percentage of the number of out-of wedlock births during the same period at each hospital, if data regarding births are available. This percentage will provide a more accurate measure of a hospital-based program's operation. Data regarding the number of out-of-wedlock births per hospital are already collected by vital statistics agencies in some States.

If the number of acknowledgments received from a hospital seems unusually low or has declined significantly from the number received in the past, the State should contact the hospital to determine whether training or other assistance is needed.

e. *Forwarding and Recording Acknowledgments.*

1. *Comment:* We received numerous comments regarding the proposal to require procedures for filing voluntary acknowledgments with either the State IV–D agency or a centralized State agency that provides the State IV–D agency access to copies of, and identifying information on, the acknowledgments. The proposed rule also would have required the IV–D agency, in IV–D cases needing paternity establishment, to determine if a voluntary acknowledgment had been filed with the agency designated by the State.

Many commenters suggested that, while a central database of information regarding acknowledgments might be useful, there is little, if any, benefit in requiring States to file actual copies of acknowledgments with a central entity. Actual copies may be needed at the local level by a court or agency, but not at the central or State level, during support order establishment or other proceedings. The commenters explained that many States already have procedures for filing acknowledgments with a local court or agency.

One commenter suggested that we require *all* voluntary acknowledgments, not just those obtained through hospital-based programs, to be filed with a central entity.

Response: We have significantly revised this requirement in light of comments to the proposed rule. The final regulation, at § 303.5(g)(2)(iv) requires a hospital-based program to forward completed acknowledgments or copies to the entity designated under § 303.5(g)(8). Section 303.5(g)(8) requires the State to designate an entity to which hospital-based programs must forward completed voluntary acknowledgments or copies. Under State procedures, this entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV–D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f).

A State's procedures may provide for forwarding acknowledgments or copies to any entity designated by the State—a local court or agency, the vital statistics agency, the IV–D agency, or some other entity. We are not, as one commenter suggested, requiring the designated entity to be the State's vital statistics agency; we want to avoid unnecessary interference with States' previously-established procedures. A State can have more than one designated entity. The designated entity is responsible for recording identifying information about the acknowledgments with a statewide database (or, alternatively, for forwarding the acknowledgments or identifying information to another entity responsible for recording the identifying information with the statewide database). No matter what entity a State designates, the information should be recorded promptly so that necessary information and documentation will be readily available to the IV–D agency.

The State must have one centralized, statewide database, which may be automated at State option, that contains identifying information about acknowledgments. The identifying information must be maintained in one automated database (if automated) or one central location (if not automated). The database may be established and maintained by the State IV–D agency, some other State agency, or a contractor under agreement with a State agency. If a State's database is maintained by the IV–D agency, we encourage the IV–D agency to incorporate the database into its statewide computerized support

enforcement system. The database may be maintained by an agency other than the designated entity, as long as the designated entity records (or forwards to another entity for recording) with the statewide database identifying information about acknowledgments forwarded to the entity. The State may, at State option, develop procedures for filing or recording actual copies of acknowledgments, in addition to identifying information, in a statewide database.

As with the proposed rule (58 FR 62599, 62601), the requirement for forwarding acknowledgments or copies is limited to hospital-based programs. (To clarify the applicability of this requirement, we are including it in the hospital-based program section at § 303.5(g) rather than in § 302.70 as proposed). We do not have authority to mandate that persons or entities in non-IV–D cases (except for hospital-based programs, which are required as a condition of IV–D State plan approval) adhere to these procedures. Forwarding/recording procedures are not necessary to link IV–D cases with acknowledgments obtained through the IV–D program, since the IV–D agency is already aware of such acknowledgments. However, for purposes of uniformity and centralized access, we strongly encourage States to expand their statewide databases to include identifying information on voluntary acknowledgments obtained from sources other than hospital-based programs. At State option, procedures for forwarding acknowledgments to the designated entity may be made available to any party who wishes to use the procedures. States may want to include instructions for forwarding the acknowledgment on the acknowledgment form itself. If a State's vital statistics agency (or similar agency responsible for birth registration) is the designated entity or maintains the statewide database of identifying information, the State may choose to link these forwarding/recording instructions with instructions for adding the father's name to the birth certificate.

The purpose of these procedures is to ensure that the IV–D agency has a source for determining, in a IV–D case needing paternity establishment, whether or not an acknowledgment was obtained outside the IV–D system (e.g., at the hospital). The IV–D agency should use such previously-obtained acknowledgments of paternity as the basis for establishing and enforcing a child support order.

To ensure that voluntary acknowledgments are used in IV–D case processing, § 303.5(h) compels each IV–D agency to determine, in cases needing paternity establishment, if identifying information about a voluntary acknowledgment has been recorded in the statewide database mandated by § 303.5(g)(8). Once a IV–D agency matches a case with a voluntary acknowledgment recorded in the statewide database, it must then use that acknowledgment to seek a support order in IV–D cases.

When attempting to determine if a voluntary acknowledgment of paternity has previously been completed in a IV–D case needing paternity establishment, we encourage the IV–D agency to first ask the custodial parent whether the alleged father voluntarily acknowledged paternity at the hospital or at some other time. However, unless the custodial parent is able to provide a copy of the acknowledgment, asking the custodial parent, by itself, does not satisfy the requirement at § 303.5(h) under which the IV–D agency must determine if an acknowledgment has been recorded with the statewide database. A recent evaluation of one city's hospital-based program found that, in IV–D cases where a voluntary acknowledgment had previously been obtained at the hospital, the IV–D agency was not aware of the acknowledgment in about half of the cases. Custodial parents may be unable or unwilling to tell the IV–D agency about a voluntary acknowledgment previously obtained in the hospital. Therefore, a State must have some other means, either automated or manual, for checking the records of the statewide database to determine if identifying information about an acknowledgment has been recorded with the statewide database. Although we encourage use of automated matching, we are not requiring such since the records of a State's designated entity may not be automated and we are not providing Federal financial participation for the development of a computer system for the designated entity. Regardless of whether the State uses an automated or manual process, the IV–D agency must have access to up-to-date information.

A IV–D agency does not need to determine if a voluntary acknowledgment has been recorded with the statewide database in a case where the IV–D agency: (1) Is already aware that an acknowledgment has been completed and has documentation necessary to seek a support order on the basis of that acknowledgment; (2) knows that it is unlikely that an acknowledgment is recorded with the statewide database (e.g., the child's birth certificate indicates that the child was born in another State); or (3) does not have sufficient information to make a determination. In a case where a child was born in another State, the IV–D agency may check with the other State to determine if identifying information about an acknowledgment has been recorded. With respect to situations where sufficient information is lacking, we encourage the IV–D agency to search for an acknowledgment under the child's name if the custodial parent fails to provide the name of an alleged father. Failure of the custodial parent to provide the name of an alleged father is not a sufficient basis, by itself, for deciding not to determine if an acknowledgment has been recorded.

Under State procedures, the IV–D agency must have timely access to whatever identifying information and documentation it needs, in a IV–D case, to determine in accordance with § 303.5(h) if an acknowledgment has been recorded in the statewide database and to seek a child support order on the basis of a recorded acknowledgment in accordance with § 303.4(f). This identifying information must include sufficient information to enable the IV–D agency to determine if an acknowledgment recorded in the statewide database matches a IV–D case needing paternity establishment—for example, names and social security numbers.

Concerning documentation, in some States, the IV–D agency may need the original acknowledgment or an authenticated copy in order to establish a support order on the basis of the recorded acknowledgment. If this is the case, in order to satisfy § 303.5(g)(8), under which the IV–D agency must have timely access to necessary information and documentation, the State may need procedures under which some entity (perhaps the entity designated to receive acknowledgments or copies from hospital-based programs under § 303.5(g)(8)) maintains acknowledgments and gives the IV–D agency access to acknowledgments or copies. Identifying information in the statewide database should indicate the location where an acknowledgment or copy is maintained, if such information is necessary.

If necessary, the IV–D agency should enter into agreements with: (1) The agency responsible for maintaining the statewide database (in order to obtain identifying information about acknowledgments recorded in the database), and (2) the entity that maintains the acknowledgments (in order to obtain authenticated copies). If allowable under State law, a State may also choose to give other agencies, besides the IV–D agency, access to the

statewide database (e.g., agencies which need the records to establish benefit claims, such as Social Security).

2. *Comment:* Several commenters requested that Federal financial participation (FFP) be available for costs associated with filing copies of acknowledgments with entities such as vital statistics agencies. One commenter asked whether 90 percent enhanced funding would be available for automated systems changes associated with filing procedures.

Response: FFP is available for three related costs. First, under § 304.20(b)(2)(i), which allows FFP for costs associated with reasonable efforts to determine the identity of a child's father, FFP is available for the IV–D agency's costs in determining, in accordance with § 303.5(h), whether a voluntary acknowledgment has been recorded with the statewide database in IV–D cases needing paternity establishment. Second, FFP is available for reasonable and necessary costs, including fees, incurred by the IV–D agency in obtaining copies from an entity of documents such as voluntary acknowledgments or birth certificates. Third, FFP is available, under previously-existing policy, for the IV–D agency's costs incurred under an agreement, including the IV–D agency's costs of establishing an agreement, governing the routine exchange of information or documents regarding acknowledgments, between the IV–D agency and the designated entity (required by § 303.5(g)(8)), the agency that maintains the statewide database, or any entity that gives the IV–D agency access to copies of acknowledgments (if such an agreement is necessary).

However, FFP is not available for the costs of establishing, maintaining, or operating the designated entity (required under § 303.5(g)(8)) or any entity where copies of acknowledgments are filed or maintained, unless that entity is the IV–D agency. Similarly, FFP is not available for the costs of establishing, maintaining, or operating the statewide database of identifying information about voluntary acknowledgments, unless the agency that maintains that database is the IV–D agency.

In addition, if a State needs to make changes to its IV–D statewide automated system in order to accommodate these new voluntary acknowledgment requirements (or other requirements in this rule), enhanced FFP is available for automated systems until September 30, 1995. If changes are required after that date, regular FFP is available.

3. *Comment:* We received several comments urging us to require that the State add the father's name to the child's birth certificate once the father acknowledges paternity.

Response: Although we encourage such procedures and encourage States to consider any changes in law or procedure to facilitate this outcome as part of their implementation of OBRA '93 requirements, we have no authority to regulate State birth registration procedures. If a State chooses its vital statistics agency (or similar agency responsible for birth registration) as the designated entity or the agency responsible for its statewide database of identifying information on acknowledgments (required under § 303.5(g)(8)), the State may want to link the forwarding/recording process with procedures for including the father's name on the birth certificate if an acknowledgment is sufficient basis for including the father's name on the certificate under State law. If a State's acknowledgment form includes the social security numbers of the parents, the recording of voluntary acknowledgments with a vital statistics agency may also be a way of obtaining social security numbers from parents as required during the birth registration process by section 205(c)(2)(C)(ii) of the Social Security Act.

4. *Comment:* Some commenters requested that we prohibit filing agencies (such as vital statistics agencies or courts) from charging the State IV–D agency or IV–D agencies in other States fees for obtaining copies of voluntary acknowledgments or other records.

Response: We do not have the authority to issue regulations forbidding State entities from charging fees for records.

However, as mentioned above, Federal financial participation is available for reasonable and necessary costs, including fees, incurred by the IV–D agency in obtaining from an entity copies of documents such as voluntary acknowledgments or birth certificates.

5. *Comment:* One commenter suggested that we mandate a system for officially recording and documenting genetic test results which create a presumption of paternity.

Response: We do not think such a system is necessary. Most genetic testing takes place in the context of ongoing action to establish paternity. Once genetic test results either exclude an alleged father, create a presumption of paternity, or reflect inclusionary findings not rising to the level of a presumption, the action will move to the next step in the process. By contrast, a database of voluntary acknowledgments is needed since a large number of acknowledgments are obtained outside of an ongoing paternity/support order establishment process (e.g., in hospital-based programs).

f. *FFP Availability for Hospital-Based Programs.*

1. *Comment:* Numerous commenters requested that Federal financial participation (FFP) for hospital-based programs be expanded to cover additional costs, including the costs of hospital staff; travel for hospital staff attending training sessions; notaries; and other operating costs. Other commenters suggested that FFP availability should be extended to schools, WIC agencies, town clerks, and other agencies that might provide voluntary acknowledgment services.

Response: FFP is available for certain costs associated with hospital-based programs. First, under previously-existing policy, FFP is available for the IV–D agency's costs incurred under necessary agreements between the IV–D agency and birthing hospitals or other State agencies, including the IV–D agency's costs of establishing such agreements. Second, FFP is available for IV–D staff that work on developing and implementing (e.g., training, drafting materials, meeting with hospital officials) the hospital-based program.

Third, under new § 304.20(b)(2)(vi), FFP is available for payments of $20 or less actually made to birthing hospitals for each voluntary acknowledgment obtained through a hospital-based program as defined by § 303.5(g)(2). Several States have found such payments to be successful in obtaining the cooperation of hospitals. The $20 per voluntary acknowledgment is also available for voluntary acknowledgments obtained in other entities that provide prenatal or birthing services. In order for payments to be eligible for FFP, the birthing hospital or other entity must, however, have a formal agreement with the IV–D agency States are not required to provide payments to hospitals.

Fourth, § 304.20(b)(2)(vii) makes FFP available for the costs of developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity

Finally, § 304.20(b)(2)(viii) makes FFP available for reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program as defined by § 303.5(g)(2). Although the training must be short-term in order to be eligible for FFP, training may be provided on a periodic basis, as

suggested by one commenter. This rule also modifies § 304.23(d), which limits the availability of FFP for training to specific circumstances, to allow for FFP as provided for in § 304.20(b)(2)(viii). Consistent with existing policy which allows FFP for the cost of judge's travel to attend training not associated with the judicial determination process, FFP would be available for the cost of hospital personnel's travel to attend reasonable and essential short-term training sessions regarding the hospital-based program.

We encourage, but do not require, States to extend their hospital-based programs beyond birthing hospitals to clinics, health departments, and other facilities. Since a mother's stay in a hospital after giving birth is relatively short, parents may benefit from receiving information about paternity establishment before birth, in prenatal clinics for example. To encourage the expansion of early paternity establishment programs beyond hospitals, FFP is available for developing and providing materials about paternity establishment and forms necessary to acknowledge, not only to hospitals, but to other entities that provide prenatal or birthing services. Similarly, FFP is available for payments of $20 or less, not only to birthing hospitals, but to other entities that provide prenatal or birthing services and obtain a voluntary acknowledgment pursuant to a written agreement with the IV–D agency.

However, FFP is *not* available for other costs, including hospital operational and staff costs. We are not providing FFP for costs associated with voluntary acknowledgment services provided by schools, WIC agencies, town clerks, or other such entities. Except in limited and clearly defined circumstances as already enunciated, we do not believe the IV–D program should finance costs of hospitals, health care providers, vital statistics agencies, or public educational programs. As previously stated, FFP is available for payments of up to $20 per acknowledgment to birthing hospitals (and other providers of prenatal and birthing services who obtain acknowledgments). These hospitals may spend this money any way they choose—to pay for notaries, hospital staff, or other costs.

FFP is available for the costs of developing and providing materials and forms as well as for the costs of training, as described above, regardless of whether these services are provided through a contractor or directly by the State. If an entity or organization other than the IV–D agency develops or distributes the paternity establishment materials, provides nominal payments per acknowledgment, or provides training to hospital-based program staff, that entity must have a written agreement with the IV–D agency in order for the State to receive FFP for these activities.

2. *Comment:* One commenter asked whether the availability of FFP for payments of up to $20 per acknowledgment was contingent upon the establishment of an agreement between the IV–D agency and the birthing facility receiving the payment.

Response: Yes, a written agreement is necessary. To clarify this, we have added the phrase "pursuant to an agreement with the IV–D agency" to the regulatory provision at § 304.20(b)(2)(vi) allowing FFP for such payments.

Effect of a Voluntary Acknowledgment: Presumption of Paternity; Admissible as Evidence—Section 302.70(a)(5)(iv)

1. *Comment:* Several commenters asked us to mandate that a voluntary acknowledgment creates a conclusive presumption of paternity, as a way of giving children finality and improving interstate uniformity. Conversely, other commenters argued that a presumption arising from a voluntary acknowledgment should always be rebuttable, since some acknowledging parents may mistakenly acknowledge paternity. One commenter asked that we specify a process for how to handle a case when a party who previously signed a voluntary acknowledgment of paternity later denies that the man named on the acknowledgment is the father.

Response: We do not have the authority to either mandate or prevent a State from having laws under which a voluntary acknowledgment creates a conclusive presumption of paternity. Subsection 466(a)(5)(D) of the Act requires States to have laws and procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity.

Despite the concerns of commenters, we would like to emphasize the benefits of this provision of the Federal law. Prior to enactment of OBRA '93, in many States an acknowledgment was simply considered some evidence of paternity. The new Federal law and this implementing regulation ensure that the acknowledgment creates a rebuttable or conclusive presumption instead.

In a paternity case, a rebuttable presumption is a rule of evidence that shifts the burden of proof to the presumed father to disprove paternity, if he chooses to contest paternity after the acknowledgment. A conclusive presumption has the same legal effect as a judgment for paternity. If a State enacts laws under which a voluntary acknowledgment creates a conclusive presumption, the State may still allow certain challenges, just as judgments can now be challenged. The mechanics of challenging an acknowledgment, whether a rebuttable or conclusive presumption, are left to State law and procedure.

2. *Comment:* One commenter suggested that the term "conclusive presumption," used in connection with both voluntary acknowledgments and genetic test results meeting a State's threshold, is confusing and subject to multiple interpretations.

Response: We use the term "conclusive presumption" because it is used in the statute. Basically, a conclusive presumption has the same legal effect as a judgment or determination of paternity. For example, the law of one State where a voluntary acknowledgment creates a conclusive presumption reads: "A written acknowledgment by both the man and woman that the man is the father of the named child legally establishes the man as the father of the child for all purposes." Another State's law reads: "The parent and child relationship between a child and a man may be established by a written statement of the father and mother made under oath acknowledging paternity * * *. Such statement * * * shall have the same legal effect as a judgment * * *."

However, a State may still allow challenges to a conclusive presumption, just as judgments can be challenged (e.g., in cases where there is evidence that the acknowledgment was obtained by fraud or coercion, or where signatures were forged).

Conditions for Admission of Genetic Test Results as Evidence—Section 302.70(a)(5)(v)

1. *Comment:* Several commenters complained that the requirement regarding admission of genetic test results as evidence would interfere with their existing procedures. Some of these commenters requested that we allow alternative procedures, besides those contained in the proposed rule, for admission of genetic test results. One commenter asked us to permit a timeframe, within which objections to genetic test results must be made, triggered by the date of receipt of genetic test results.

Response: Section 302.70(a)(5)(v) requires States to have laws and procedures under which any objection to genetic test results must be made in

writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

This provision has two major benefits. First, by only allowing challenges that are made within a designated timeframe, it prevents last-minute challenges to genetic test results. Last-minute challenges are particularly difficult to meet since they may require testimony from laboratory technicians and experts who often live out-of-state and must travel long distances.

Second, in cases where no objection is timely raised, this provision expedites the process by allowing admission of a written report of the genetic test results without the need for foundation testimony. Prior to the enactment of OBRA '93, some States had cumbersome foundation requirements (e.g., requiring the testimony of every person involved with the chain of custody of the blood sample) that are unnecessary if no objection to the test results is raised.

In some respects, this provision of the law and regulation gives States flexibility. States may set the "specified number of days" within which objections to genetic test results must be made before a hearing. The U.S. Commission on Interstate Child Support recommended that States require any objection to genetic testing results be made in writing at least *21 days* prior to trial. Before the enactment of OBRA '93, at least four States had a timeframe that required an objection to genetic test results be made at least 20 days prior to trial; two States required objections to be made at least 30 days prior to trial.

Furthermore, while this rule requires that genetic test results be admissible without foundation in cases where no timely objection is raised, the judge or decisionmaker who determines matters of fact still must decide what weight to accord the test results, in light of other evidence presented, if the results do not reach the State's threshold for creating a presumption of paternity. Moreover, this provision does not prevent a State or its tribunals from setting standards for laboratory accreditation or procedures and parameters regarding what type of tests can be admissible as evidence. While we encourage all States to admit genetic testing results that have proven to be reliable, we recognize that as new testing technologies are developed, there may be a need to critically examine new procedures in the scientific community and in the courts before test results from such procedures are used on a widespread basis.

In other respects, however, this provision is very specific. Section 466(a)(5)(F) of the Act requires that an objection must be made "a specified number of days before a hearing at which such results may be introduced into evidence". State timeframes that allow objections within a specified number of days of "receiving a copy of the testing report" or "after service of the written test results" do not require objections to be raised a specified period prior to the hearing, and therefore do not meet the requirements of Federal law. However, a State with such a timeframe would satisfy Federal requirements if: (1) Its State law also includes a timeframe for raising objections within a specified number of days prior to a hearing, or (2) its State law requires that a request for genetic tests must be made, and testing completed, within a specified number of days prior to the hearing. In other words, a State law which specified that objections must be made, for example, "within 20 days of receipt of genetic testing results or 20 days prior to the hearing, whichever date is earliest," would meet the requirements of this rule.

State statutes must require objections to be raised within a specified number of days before a hearing. Allowing objections "within the time limit" or "within the time allowed by the court" do not meet Federal requirements unless court rules, regulations, or other procedures also specify a standard number of days allowed by law.

State law, in addition to including timeframes for raising objections to genetic test results, must also indicate that a written report of such results is admissible as evidence without foundation testimony if no written objection is raised. A State, through statute, regulation, or binding procedure, must meet both parts of the requirement at § 302.70(a)(5)(v).

2. *Comment:* To ensure due process, one commenter urged that States should be able to require foundation testimony (e.g., setting forth the chain of custody of the blood sample) unless the parties stipulate that genetic test results may be introduced as evidence.

Response: As clearly indicated by the Federal statute, State law must provide that if no timely objection is made, genetic test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. This requirement does not compromise due process protections. The timeframe requiring objections to be made in writing before the hearing merely ensures that the other party is fairly informed and given a specified period within which to arrange for witnesses to testify in support of the test results. The alleged father can object to test results within the time period specified by the State in accordance with § 302.70(a)(5)(v) and make any challenges warranted. If the test results are admitted, the alleged father can introduce other evidence (e.g., regarding his relationship with the mother during the probable period of conception). Even if the test results meet the State's threshold and create a presumption of paternity, the alleged father can attempt to rebut the presumption by presenting other evidence. It should be recognized that genetic test results are a unique form of material evidence in a paternity hearing. If there are serious doubts concerning chain of custody, laboratory procedures or analysis of the results, the testing can simply be replicated at the same facility or another laboratory. All "objections" to the evidence can and should be resolved before any hearing ever occurs.

3. *Comment:* One commenter asked if a State could include an exception to its timeframe for raising objections to genetic test results, for cases where the party does not receive the genetic test results in time to comply with the objection period. Under the exception, the party would have to respond at least 24 hours (or a similar short period) prior to the hearing. This would prevent the IV–D office from having to request a continuance of the hearing in cases in which the test results are received after the timeframe for objecting has already expired.

Response: Such an exception is allowable. Basically, the State would have two timeframes—a regular timeframe and a shorter timeframe for use when test results are received late (after the regular timeframe for objecting has elapsed). Federal requirements do not prevent a State from having more than one timeframe, as long as each timeframe includes a "specified number of days" and satisfies other requirements at § 302.70(a)(5)(v).

Presumption of Paternity Based on Genetic Test Results—Section 302.70(a)(5)(vi)

1. *Comment:* Some commenters suggested that OCSE set a standard national threshold or a minimum threshold for creating a conclusive presumption of paternity.

Response: We believe that by using the open-ended phrase "a threshold probability", the statute gives States

flexibility to designate a specific threshold probability that creates a presumption of paternity. There appears to be no widespread agreement in the child support or genetic testing community presently regarding what percentage should be designated as the threshold, and commenters failed to suggest a specific threshold. Prior to the enactment of OBRA '93, about half of the States had adopted a presumption of paternity standard based on genetic test results. These States' statutory threshold probabilities generally fall at a point in the range of 95 to 99 percent. We recommend that the remaining States choose a percentage within this range.

2. *Comment:* In the preamble to the proposed rule, we suggested that the threshold probability should be the inclusionary probability that the alleged father is the biological father of the child. Some commenters requested that States be allowed to tie the threshold to either the paternity index or another statistical standard determined by the State based upon the results of the genetic tests.

Response: The statute, and implementing regulation at § 302.70(a)(5)(vi) require that a presumption of paternity be based upon genetic test results indicating a threshold probability of the alleged father being the father of the child. We are allowing a State to tie its threshold to an inclusionary probability, whether expressed as the paternity index or another statistical standard that indicates the probability, based upon the results of the specific testing performed, that the accused man is the biological father of the child.

The paternity index expresses the likelihood that the alleged father is the true biological father compared to the likelihood that a random man of the same race is the father. The paternity index can be converted to a probability of paternity through a mathematical calculation, and is merely another way of expressing the "likelihood" or the inclusionary probability of paternity.

3. *Comment:* One commenter suggested that tighter standards regarding the use or acceptance of genetic test results are needed if test results can create a conclusive presumption of paternity.

Response: While OCSE does not have the statutory authority to establish such testing standards, some private entities do accredit genetic testing laboratories and techniques. We encourage States to use high-quality laboratories. OCSE provided a listing of laboratories in *Directory: Genetic Testing Laboratories* (July 1993, 3rd Edition).

4. *Comment:* One commenter requested clarification regarding how States are to resolve cases involving both presumed and putative fathers or more than one presumed father.

Response: In some cases, the presumption of paternity created by genetic test results may conflict with a presumption created by a voluntary acknowledgment, a presumption of legitimacy created by marriage, or another presumption. For example, a child born to a married woman is presumed to have been fathered by the woman's husband in most States; however, genetic test results could create a presumption (either rebuttable or conclusive) that another man is actually the father. State law determines how conflicting presumptions are handled, and several States have enacted legislation to address this issue. The Uniform Parentage Act (UPA), a model State law that approximately 18 States have enacted, provides that if two or more presumptions arise which conflict with each other, the presumption which, on the facts, is founded on the weightier considerations of policy and logic controls. Presumptions may be rebutted and, finally, the paternity issue is resolved by a court or administrative decree.

The presumption based on genetic test results required by § 302.70(a)(5)(vi) and the presumption based on a voluntary acknowledgment required by § 302.70(a)(5)(iv) are evidentiary requirements. States may have laws which establish additional presumptions, and rules for resolving apparent conflicts. A conclusive presumption would take precedence over a rebuttable presumption. In cases where two or more rebuttable presumptions applied, the trier of fact would be required to sort out the evidentiary considerations and make the ultimate decision.

Voluntary Acknowledgment is Basis for Seeking Support Order—Sections 302.70(a)(5)(vii) and 303.4(f)

1. *Comment:* Numerous commenters objected to the proposed provision under which genetic test results meeting or exceeding a State's threshold probability must be recognized as the basis for seeking a support order without requiring any further proceedings to establish paternity. Many commenters suggested that since this provision was not in the Federal statute, OCSE did not have the authority to include it in regulation. Commenters also argued that such a requirement would unnecessarily interfere with existing, successful State procedures. For instance, according to commenters, since some States require a paternity proceeding to be filed before genetic test results can be obtained, paternity actions would have to be filed and immediately dismissed upon receipt of test results in most cases (either because the threshold probability was met, requiring action to seek a support order to begin, or because the man was excluded). According to another commenter, at least one State's law prohibits discovery of assets and income (necessary for support order establishment) until after paternity has been established or action is filed in court. Other commenters worried that this requirement would impede due process by not giving the alleged father sufficient opportunity to challenge the genetic testing evidence.

Response: While we believe we do have authority under section 1102 of the Act to include such a requirement, we are, in response to the overwhelming number of commenters, encouraging, but not mandating, that genetic test results meeting or exceeding the State's threshold be recognized as the basis for seeking a support order without further action to establish paternity. We are limiting the requirement at § 302.70(a)(5)(vii) to what is explicitly mandated by the statute—a voluntary acknowledgment must be recognized as the basis for seeking a support order without further action to establish paternity.

We had proposed to expand this requirement to genetic test results meeting a State's threshold as a way of ensuring that support orders are established as quickly as possible. However, as some commenters pointed out, as long as a State meets the expedited process timeframes under § 303.101(b)(2), there is no need to unnecessarily interfere with a State's procedures. By limiting this requirement to what is mandated by statute, we are giving States more flexibility. This approach is more results-oriented since it ensures expeditious outcomes through timeframes rather than a prescriptive procedural requirement.

However, we still encourage States to consider implementing procedures under which genetic test results meeting or exceeding the State's threshold must be recognized as the basis for seeking a support order without further action to establish paternity. In fact, such procedures may help States meet expedited process timeframes. For the purpose of consistency, a State may want to give the same weight to genetic test results (at a certain threshold level) as it does to a voluntary acknowledgment as the basis for seeking

a support order. We do not believe such procedures compromise due process. If the presumption, based upon genetic test results, is rebuttable, and a written objection is timely filed, the alleged father may be given the opportunity during the support establishment proceeding to contest paternity.

2. *Comment:* For States where a voluntary acknowledgment creates a rebuttable presumption of paternity, several commenters expressed confusion about how the State could seek a paternity determination based on the acknowledgment when OBRA '93 requires State law to recognize a voluntary acknowledgment as the basis for seeking a support order without further proceedings to establish paternity. One commenter asked whether a paternity determination is required if a support order can be entered without a paternity determination. Several other commenters suggested that if a State's voluntary acknowledgment creates a rebuttable presumption of paternity, the presumption should automatically "ripen" into a conclusive presumption or determination of paternity within a specified period of time.

Response: Although a voluntary acknowledgment must serve as the basis for seeking a support order without further proceedings to establish paternity, the IV–D agency must still establish paternity in accordance with State law. The statute merely precludes State requirements that the paternity determination must be a separate, preliminary action prior to a proceeding seeking support for the child. The voluntary acknowledgment may be the basis for seeking an immediate temporary support order, pending a final determination of paternity, or the request for support and the paternity proceeding could be combined.

The IV–D agency must meet two requirements once a father voluntarily acknowledges paternity. First, action to seek a child support order must begin based upon the acknowledgment, without waiting for further proceedings to establish paternity. Second, unless the acknowledgment by itself establishes paternity, the IV–D agency must take further action to establish paternity in accordance with legal process under State law.

In order to meet both of these requirements, we encourage States where a voluntary acknowledgment creates a rebuttable presumption of paternity to combine paternity and support order establishment in the same proceeding, if both are needed in a case. If the IV–D agency seeks both paternity and support in the same proceeding, it may also be possible to obtain a temporary support order pending a final judgment.

Alternatively, a State may choose to establish support awards on the basis of a rebuttable presumption of paternity, and to convert the presumption to a final paternity determination through subsequent administrative or judicial processes. For example, State law could provide that the rebuttable presumption of paternity becomes, by operation of State law, a conclusive presumption or a determination of paternity if not challenged within a specified period of time. Another option would be to permit the presumption to be challenged in a separate proceeding after the intermediate support order is entered based upon the voluntary acknowledgment. In any event, paternity establishment is a mandatory IV–D function, and a final determination must be made in accordance with the timeframes.

If under State law, a voluntary acknowledgment creates a conclusive presumption of paternity (which is a legal determination of paternity), the IV–D agency does not need to take any further action to establish paternity and may immediately move to seek a support order on the basis of an acknowledgment.

3. *Comment:* Several States' procedures provide for the filing or ratification of voluntary acknowledgments by a court or administrative agency. Commenters asked whether such filing/ratification could occur prior to initiation of action to establish a support order on the basis of the acknowledgment, or whether filing/ratification would be considered "further proceedings to establish paternity" under § 302.70(a)(5)(vii). Other commenters asked if such filing/ratification could occur as a prerequisite to the acknowledgment creating a rebuttable or conclusive presumption of paternity in accordance with § 302.70(a)(5)(iv), or whether the acknowledgment itself would have to create a presumption of paternity.

Response: In IV–D cases, we would not construe mere filing or ratification of an acknowledgment by a court or administrative agency as "further *proceedings* to establish paternity" (emphasis added) *if* such filing/ratification did not require a hearing and did not unreasonably delay seeking a support order. In most States with filing or ratification procedures, the process is *pro forma* and completed in a matter of days. If a State's filing/ratification procedures meet these conditions, it may file or ratify an acknowledgment prior to initiating support proceedings in IV–D cases. However, we encourage States to combine any filing/ratification process with the support order establishment process so that there will be no delay (e.g., if an acknowledgment must be filed with the court it could be done as part of the proceeding for support order establishment).

Similarly, under current law, filing/ratification of an acknowledgment can be a prerequisite to the creation of a rebuttable or conclusive presumption of paternity. For example, the Uniform Parentage Act (UPA) establishes a presumption of paternity if a man "acknowledges his paternity of the child in a writing *filed with the appropriate court or Vital Statistics Bureau* (emphasis added) * * *." Some States require filing with a court or agency as part of the voluntary acknowledgment process itself. The issue of whether or not filing/ratification is part of the voluntary acknowledgment process or a post-acknowledgment prerequisite to the establishment of a presumption of a paternity is largely a matter of semantics. These procedures are matters of State discretion so long as the acknowledgment, ultimately, has presumptive evidentiary value and is recognized as the basis for seeking a support order.

Default Orders—Sections 302.70(a)(5)(viii) and 303.5(f)

1. *Comment:* Commenters asked whether State law must provide for entry of a default order for *both* failure to appear at a hearing *and* failure to respond to a notice. Other commenters asked whether State law must require default orders even in cases where the defendant initially files an answer or other appropriate response, but later fails to appear at a hearing. In some States, a default order cannot be issued once the defendant files an initial answer or response, unless that initial answer is stricken.

Response: We have reworded § 302.70(a)(5)(viii) for clarity. State law must require entry of default orders upon showing that the alleged father failed to respond to service of process *in accordance with State procedures* (assuming that process was served and any other showing required under State law has been met). State procedures generally require the alleged father to file a written response within a certain timeframe or to appear on a specific date or within a reasonable period of time specified by the State. A State should link entry of a default order to failure of the alleged father to act in accordance with the procedure the State has established.

In addition, State law need not require a default order to be entered if the alleged father initially responds in accordance with State procedures but later fails to appear at a hearing or respond to a notice. Section 302.70(a)(5)(viii) only requires States to enter default orders in cases where there is no initial response from the alleged father (upon showing of service of process and any additional showing required under State law). States may, however, choose to go beyond this minimum requirement by compelling tribunals to enter default orders in cases even if the alleged father initially responds. For example, some States provide for the use of default judgments to address situations in which the alleged father fails to cooperate with an order to appear for genetic testing.

2. *Comment:* One commenter suggested that all alleged fathers should be provided advance notice specifying the conditions under which a default order may be entered.

Response: We are leaving this matter to State law. We believe that States already provide advance notice whenever there is the potential for a default order, generally as part of the notice sent to the alleged father requesting him to respond or appear at a hearing. Some States may require additional proceedings prior to entry of the default order to ensure that the alleged father was properly notified and is competent to respond. States also may have procedures for challenging and setting aside default orders, and may notify the parties of this process when default orders are entered.

3. *Comment:* One commenter suggested that the provision regarding default orders should be permissive rather than mandatory, thereby allowing exercise of judicial discretion based on the specific circumstances of each case.

Response: To meet the requirements of the Federal statute, States must *require*, not simply allow, tribunals to enter default orders establishing paternity in accordance with § 302.70(a)(5)(viii). Prior to enactment of OBRA '93, most States already had provisions for entry of judgments by default as part of their civil procedure code or statute. At least eleven States also had default provisions that applied specifically to paternity cases. However, in many States the default provision was permissive rather than compulsory. States may need to change such permissive default laws to meet Federal statutory requirements, which will ensure that default orders are routinely issued in paternity cases, where appropriate. Judicial discretion *not* to enter the default order still may be applied, for instance, where the circumstances indicate that the alleged father may not have been properly served or may not have had the capability to respond (e.g., he has a mental deficiency or is a minor).

4. *Comment:* One commenter asked why the proposed regulation required State default laws to apply to contested paternity cases.

Response: We have not included the word "contested" in the final requirement at § 302.70(a)(5)(viii). We agree that use of the word "contested" is unnecessary. Under some States' definition of a "contested" case, a case may not actually be contested until the alleged father responds and denies paternity. The default provision applies to cases where the alleged father fails to respond.

5. *Comment:* One commenter requested that we expand the default requirement to apply to support establishment actions as well as paternity actions.

Response: Because the statute specifically limits the scope of the default provision to paternity establishment, we are limiting its application in this regulation. Therefore, these regulations do not compel State law to require that default orders be entered in support order establishment actions.

Regulations at § 303.101(d)(4) do require that presiding officers under expedited processes have the ability to enter default orders in both paternity and support establishment cases. However, State law may give the presiding officers discretion regarding whether or not to actually enter the default orders in support establishment actions. For example, if there is no evidence sufficient to apply the guidelines, it may be impossible to enter a support order by default. We encourage presiding officers to enter default orders in appropriate support establishment cases. In paternity establishment cases, State law must compel, not simply allow, presiding officers to enter default orders in accordance with § 302.70(a)(5)(viii).

6. *Comment:* Some commenters asked us to specify what "additional showing" is required for entry of a default order in accordance with § 302.70(a)(5)(viii). For example, one commenter suggested that we specify that "additional showing" means a *prima facie* case.

Response: Since the statute says "*any* additional showing required *by State law*" (emphasis added), States have discretion to specify their own requirements. These regulations reflect the discretion afforded by the statute. We recommend, in order to withstand possible future challenge, that States require some evidence of paternity, such as a sworn statement or allegation by the mother, before entering a default order In addition, States may require some evidence or showing that the alleged father is not under a legal or medical disability or subject to protection of the Soldiers and Sailors Civil Relief Act (50 U.S.C. §§ 501–591).

Full Faith and Credit for Paternity Determinations—Section 302.70(a)(11)

1. *Comment:* Several commenters questioned how a State should treat a voluntary acknowledgment or genetic test results obtained by another State, particularly if the acknowledgment or test results created a rebuttable presumption in one State and a conclusive presumption in the other

Response: Under the principle of full faith and credit, an out-of-State paternity judgment is to be given the same force and effect in other States as it is given in the State of origin. When a State gives full faith and credit to another State's paternity judgment, it honors that judgment according to its terms, just as if it had been entered in the second State.

Under OBRA '93, a State must have laws providing that it will recognize a determination of paternity made by another State whether it is established through voluntary acknowledgment or through administrative or judicial processes. A conclusive presumption based upon genetic test results or a voluntary acknowledgment which creates a conclusive presumption of paternity in the State where it is acknowledged should have the same force and effect as a judgment for paternity. Other States must give full faith and credit to paternity determinations based upon another State's conclusive presumption.

Generally, if no determination of paternity has previously been made, State law of the forum State (i.e., the State where the paternity/support action occurs) will determine the legal weight given to a voluntary acknowledgment, genetic test results, or other evidence (regardless of whether the acknowledgment, test results, or evidence were obtained by or in the State or by another State).

2. *Comment:* Some commenters asked whether a paternity determination made by one State could be contested or overcome in another State, and if so, which State's laws and procedures are applicable.

Response: A paternity determination, like a judgment, even though entitled to full faith and credit is generally subject to collateral attack. Depending on State

law, a paternity determination could be attacked if it was fraudulently obtained, for example, or if the issuing tribunal lacked jurisdiction. A collateral attack may be barred, however, if the party challenging the determination had the opportunity to raise or previously raised the same issues at the time the paternity determination was made. The forum State's law governing choice of law will determine which State's laws and procedures apply when a judgment or paternity determination, otherwise entitled to full faith and credit, is challenged.

3. *Comment:* One commenter requested guidance regarding the degree to which determinations of paternity established by default are subject to full faith and credit, since default orders are especially vulnerable to collateral attack based on claims of improper service of process.

Response: A State must give full faith and credit to any determination of paternity, including a determination established by default. It is imperative that State tribunals require a showing of service of process prior to entry of a default order in accordance with § 302.70(a)(5)(viii) in order to limit future challenges based on inadequate service.

4. *Comment:* With the option for each State to implement rebuttable or conclusive presumptions both for voluntary acknowledgments and genetic test results meeting a State's threshold, one commenter asked how a State can determine the legal effect of an acknowledgment or test results obtained in another State for purposes of determining if that acknowledgment/test results should be afforded full faith and credit.

Response: States may consult the *Interstate Roster and Referral Guide* which will continue to be regularly updated. Furthermore, in an interstate case, the initiating State should notify the responding State of the legal significance of any previously-obtained voluntary acknowledgment, genetic test results, or other presumptive evidence of paternity.

5. *Comment:* One commenter asked that we require States to give full faith and credit to a paternity determination made by a Tribal Court.

Response: The Full Faith and Credit Clause of the U.S. Constitution provides that "full faith and credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State." Congress, by enactment of 28 U.S.C. 1738 expanded full faith and credit to the judicial proceedings of any court of any "State, Territory, or Possession of the United States". Some States have interpreted that language to include tribal governments, and other States and Tribal Courts have voluntarily recognized and deferred to each others judgments and laws as a matter of comity.

"Full faith and credit" is a concept based upon the respect and deference which the forum jurisdiction accords to the original rendering jurisdiction. We believe that paternity determinations made by Tribal Courts, especially those entered pursuant to cooperative agreement with the IV–D agency in accordance with State laws and Federal requirements, are entitled to such deference. We encourage States to voluntarily grant full faith and credit to tribal determinations of paternity, whether they are required to by Federal statute or not.

Expedited Processes for Paternity Establishment—Sections 302.70(a)(2), 303.4(d), and 303.101

a. *Paternity and Support Establishment Timeframe.*

1. *Comment:* We received numerous comments regarding the proposed use of "date of locating the alleged father or noncustodial parent" as the starting point for the expedited process timeframe at § 303.101(b)(2)(i). Most of these commenters objected to using location as the starting point. Several commenters recommended that the timeframe begin with "date of service of process" instead. According to the commenters, location should not be the starting point of the timeframe because: (1) Expedited process timeframes should only measure activity in a State's administrative/judicial system; (2) States might initiate administrative or judicial action in each case at the beginning of the expedited process timeframe (i.e., upon location), foregoing attempts to obtain voluntary acknowledgments of paternity or consent support orders due to a fear of exceeding the timeframe if administrative/judicial adjudication later became necessary; (3) the meaning of "date of locating" is unclear and hard to define; and (4) many cases require additional location services after initial location is completed, potentially resulting in the stopping (and subsequent restarting) of the expedited process timeframe each time a case needs additional location services.

Response: In response to these numerous comments, the new expedited process timeframe at § 303.101(b)(2)(i) begins with "date of service of process" rather than "date of locating the alleged father or noncustodial parent". By beginning with service of process, the new expedited process timeframe, compared to the timeframe in the proposed rule, is more consistent with the long-standing purpose of the expedited process requirement: to measure the timeliness of child support activity in a State's administrative or judicial system.

However, as under prior regulations, timeframes are still needed to ensure that activity prior to service of process is completed quickly. The existing timeframe at § 303.3(b)(3) measures the timeliness of location activity. In this final regulation, because we are retaining service of process as the starting point of the expedited process timeframe, we must also retain at § 303.4(d) a timeframe which will measure activity between location and service of process. Therefore, we require that, within 90 calendar days of locating the alleged father or noncustodial parent, the IV–D agency must, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

The new timeframe at § 303.4(d) replaces the two former program standard timeframes previously at §§ 303.4(d) and 303.5(a)(1). In cases where paternity establishment is needed, the IV–D agency would need to obtain both a voluntary acknowledgment of paternity and a consent support order, or else serve process, within the 90-calendar-day timeframe. We have replaced two timeframes with one because we believe having separate timeframes for paternity and support establishment may have encouraged States to have separate proceedings for paternity establishment and support order establishment (and to take advantage of both timeframes). Instead, we want to encourage States to establish paternity and support (if both are needed) quickly and in the same proceeding whenever possible. This goal is also reflected in the new expedited process timeframe at § 303.101(b)(2)(i) which subsumes paternity establishment (if necessary) within the requirement for support order establishment.

In cases needing both paternity and support order establishment, the timeframe at § 303.4(d) will encourage IV–D agencies to seek both a voluntary acknowledgment of paternity and a consent support order within 90 calendar days. Studies show that about

a third of alleged fathers will voluntarily acknowledge paternity simply as a result of being given the opportunity. Even more fathers will acknowledge if genetic testing is completed and the test results show a high probability of paternity. A study of one locality in the early 1980s, at a time when genetic testing was less powerful than it is using today's technology, found that about 90 percent of alleged fathers voluntarily acknowledged paternity after receiving genetic test results that showed a probability of paternity. In order to facilitate voluntary acknowledgments of paternity, a IV–D agency may want to offer parents the opportunity to voluntarily submit to genetic testing prior to commencing an administrative or judicial action. Just as the use of voluntary acknowledgment procedures in paternity cases should facilitate expeditious establishment of paternity, the use of stipulations and consent judgments should help expedite support order establishment.

If unable to establish a support order by consent within the 90-calendar-day timeframe, the IV–D agency must serve process (or document unsuccessful attempts to serve process) before the end of the 90 calendar days. The service of process must be sufficient to commence administrative/judicial proceedings to establish a support order and, if necessary, paternity.

For purposes of the timeframes at §§ 303.4(d) and 303.101(b)(2)(i), we will construe the term "service of process" broadly as any action that gives the State jurisdiction over the defendant under State law. This could include traditional service of process (e.g., personal service, certified mail) or consent to jurisdiction (e.g., waiver of formal service by signing a voluntary appearance), as long as the date the service event occurs is documented in the case record. Therefore, if a IV–D agency established a support order by consent, the date the noncustodial parent consented to jurisdiction could count as the date of service of process. If the consent order was established within 90 calendar days from location, the State could count the action as successful under the timeframe at § 303.4(d). In addition, the case would count as disposition under the expedited process timeframe at § 303.101(b)(2) since consent to jurisdiction would be considered "service of process". Allowing a consent order to be counted as disposition under expedited process should provide States an incentive to attempt to establish orders quickly by consent.

To further encourage voluntary paternity acknowledgments and consent support orders, we will also allow States to satisfy the § 303.4(d) timeframe by "commencing proceedings" with a formal notice requesting the alleged father/noncustodial parent to *voluntarily:* either (1) acknowledge paternity or consent to entry of a support order; or (2) appear at a conference or other proceeding where he may acknowledge paternity or consent to entry of a support order. The notice must be documented in the case records. It may be delivered or served by any procedure which meets State requirements, as long as a verifiable date of formal "commencement of proceedings" is returned and maintained in the case record. However, if the State counts such notices for purposes of the § 303.4(d) timeframe, it must meet the expedited process timeframe at § 303.101(b)(2)(i), which would be triggered by the notice. Under such circumstances, the IV–D agency would have additional time (longer than 90 calendar days) to obtain a consent order prior to filing an action with a court/administrative authority, but still must establish an order within the expedited process timeframe at § 303.101(b)(2)(i), which would begin on the date that formal notice is given to the alleged father/noncustodial parent.

The definition of location, the starting point of the revised timeframe at § 303.4(d), will remain as stated in § 303.3(a). Location means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case. As stated in the preamble to the final regulation implementing standards for program operations published on August 4, 1989 (54 FR 32284, 32297), States should determine whether the information is sufficient to proceed with necessary action, which may include service of process. Verification of the information would not be necessary in a situation where the State knows the information is sufficient to take the next appropriate action. At such time as it is determined that service of process cannot be effected because the information is not sufficient to take the next appropriate action, the case would be referred for additional location attempts.

2. *Comment:* We received several comments regarding the proposal to create one expedited process timeframe for support establishment cases that would apply regardless of whether paternity had been established. Some commenters endorsed the simplicity and results-oriented nature of this approach. A few commenters opposed this proposal, arguing in favor of a separate timeframe for paternity establishment. According to opponents of a combined timeframe, establishing paternity and support in the same proceeding is untenable since, in some States, income and employment data cannot be obtained and/or verified until paternity is established, and the verification process can take several weeks.

Response: We decided against having a separate timeframe with paternity establishment as an "endpoint" Instead, the new expedited process timeframe at § 303.101(b)(2)(i) applies to IV–D cases needing support order establishment regardless of whether paternity has been established. The endpoint of the timeframe is either the date a support order is established/recorded or the date the action is dismissed. Therefore, in cases where paternity and support order establishment are needed, the IV–D agency must accomplish both actions within the timeframe (unless action is dismissed).

We chose this approach for several reasons. First, it encourages States to establish paternity and support in the same proceeding, whenever possible, in cases where both actions are needed. A separate expedited process timeframe for paternity establishment would have suggested that States could have two separate proceedings (and both time periods) for paternity establishment and support order establishment. The combined timeframe covering both paternity and support order establishment at § 303.101(b)(2)(i) does not require States to establish paternity and support concurrently in every case. After paternity is established in some cases, a continuance or other delay may be necessary to collect or verify financial information necessary to calculate a support order amount (particularly in a State where the guidelines calculation is complex). However, we want to encourage States to move quickly from paternity establishment to support order establishment and to complete both processes in the same proceeding whenever possible.

Second, having one expedited process timeframe that encompasses both paternity and support order establishment provides an incentive for States to aggressively pursue early paternity establishment through hospital-based and similar programs. If paternity is established or acknowledged at birth, the State will have a head-start on meeting the expedited process timeframe if the case subsequently becomes a IV–D case,

since one timeframe applies regardless of whether or not paternity needs to be established.

Third, having one timeframe for establishment makes the expedited process requirement simpler and easier to understand.

Finally, this approach is more results-oriented and gives States greater flexibility while still assuring expeditious outcomes. Instead of having an interim timeframe solely measuring paternity establishment, States are measured according to their ability to reach the end result (a support order) in an expeditious manner.

3. *Comment:* We received several comments regarding the proposed percentage standards (75, 85, and 90 percent) in the expedited process timeframe for paternity and support order establishment. Several commenters argued that a 90 percent standard was too low since 10 percent of cases would not be covered. Other commenters thought the percentage standards were reasonable, while one commenter thought they were too stringent. One commenter suggested that the timeframe have only two tiers—75 percent and 90 percent.

Response: The expedited process timeframe for establishment cases at § 303.101(b)(2)(i) contains 75 and 90 percent standards. As suggested by a commenter, for purposes of greater simplicity, we deleted the 85 percent standard.

The tiered-nature of the timeframe (75 percent and 90 percent) is similar to the former expedited process timeframe. These tiers recognize that some cases take longer to process than others. They require that the significant majority of cases be processed within the shortest tier of the timeframe, but allow a longer period for some cases. The first tier is 75 percent—the audit standard that has traditionally been used for evaluating compliance with case processing requirements. The highest standard in the timeframe is 90 percent of cases, not 100 percent as in the previous expedited process requirement. By not imposing an absolute standard (100 percent of cases), we have recognized that there are complex cases, particularly some contested paternity cases, that cannot be resolved within the required time period.

The 90 percent standard is also justified because we eliminated the provision which allowed IV–D agencies to exclude complex cases from expedited process. We deleted § 303.101(b)(4) which allowed the State, if a case involved complex issues requiring judicial resolution, to establish a temporary support order under expedited processes and then refer the unresolved issues to the full judicial system for resolution. Since the new expedited process timeframe includes a 90 percent standard rather than a 100 percent standard, States will be judged by their ability to meet the timeframe in all cases, including cases involving complex issues.

4. *Comment:* We received several comments about the length of the proposed expedited process timeframe for establishment cases. Some commenters praised the reasonableness of the timeframe. Other commenters suggested that the timeframe be shortened, while one commenter thought it should be lengthened.

Response: We have adjusted the length of the timeframe, from what we had proposed, since activity between locate and service of process will be measured by the 90-calendar-day timeframe at § 303.4(d) rather than the expedited process timeframe at § 303.101(b)(2)(i). The new expedited process timeframe requires disposition within 6 months in 75 percent of cases and 12 months in 90 percent of cases.

Under the new timeframe, an IV–D agency will generally have a shorter amount of time than under previously-existing timeframes to establish paternity and support in cases requiring both actions. However, it is difficult to directly compare the new expedited process timeframe to the previously-existing one since the two timeframes apply to different universes of cases. The former timeframe applied to *cases requiring support order establishment,* while the new timeframe applies to a broader universe—*cases requiring support order establishment, regardless of whether paternity has been established.*

While a direct comparison between the former and new timeframes is difficult, we believe the length of the new timeframe is reasonable and is based on careful consideration of several factors. We took into account all of the steps in the paternity and support establishment processes. For paternity establishment, we considered that in some cases time is needed for contacting the alleged father to offer him the opportunity to voluntarily acknowledge; serving process; scheduling and conducting genetic testing; completing discovery; and scheduling and conducting trials or hearings. We also considered the amount of time that it takes for an IV–D agency to obtain test results from genetic testing laboratories in paternity cases. According to laboratories that we contacted, it generally takes about three weeks to receive the written report of results from the lab in a typical case. Although two commenters suggested that three weeks is inadequate, particularly in cases involving unusual circumstances, we believe the turnaround time for receiving genetic testing results is only a small portion of the expedited process timeframe and does not warrant expansion of the timeframe.

For support order establishment, we considered that time may be needed for contacting the noncustodial parent; attempting to obtain a stipulation to an order; serving process; collecting income data and other information needed to determine the award amount; calculating the award amount using guidelines; and scheduling and conducting hearings. Many of these steps required for support order establishment can be accomplished in conjunction with paternity establishment in cases requiring both paternity and support order establishment. For example, an IV–D agency can serve process and obtain jurisdiction for paternity and support order establishment at the same time.

In addition to carefully considering comments on the proposed rule regarding the timeframe, we contacted national organizations and State IV–D agencies to obtain whatever information exists regarding the amount of time it typically takes, overall, to establish paternity and support orders. We also looked at data gathered in OCSE audits.

However, prior to the enactment of OBRA '93, few, if any, States had an array of laws which included all of the required features of the revised Federal statute. Although each reform, by itself, should expedite paternity establishment, the combined effect of adopting the entire spectrum of requirements holds tremendous potential for expediting the process.

In particular, the voluntary acknowledgment procedures should allow States to establish paternity quickly in many cases. For those cases that remain contested, the regulations regarding default orders, admissibility of genetic tests, and presumptions of paternity based on genetic test results should collectively contribute to expediting the paternity determination process in contested cases.

States may certainly go beyond the basic requirements of this rule and utilize a variety of other reforms to expedite the process for both paternity establishment and support order establishment. These reforms may include use of administrative procedures, court hearing officers, more efficient case scheduling, pretrial conferences, and improved coordination between the IV–D agency and the

courts. In paternity cases, States may also want to seriously reexamine the necessity of allowing trial by jury. At least one State, for instance, has a law which provides that the alleged father does not have the right to demand a jury trial if genetic test results show a probability of paternity of 99 percent or higher.

5. *Comment:* One commenter suggested that the timeframe should run from the date of locating "the last necessary party to the action", not from the date of locating "the alleged father or noncustodial parent". The commenter pointed out that an alleged father or non-custodial parent may apply for IV–D services. In addition, some cases may involve both an alleged father and a presumed father.

Response: Although, as discussed above, we did not implement the proposal to begin expedited process timeframes with the date of location, the commenter's suggestion is still relevant to the new timeframe at § 303.4(d). However, in the interest of maintaining clarity and consistency with other regulatory requirements, we did not adopt the commenter's suggestion. We believe the phrase "the last necessary party to the action" would make the regulatory language too vague. In the vast majority of cases, it is the alleged father or noncustodial parent who must be located.

However, in a case where the custodial parent, presumed father, or some other party besides the alleged father or noncustodial parent must be located and served in order for the case to proceed, the timeframe at § 303.4(d) would not begin until that party is located.

6. *Comment:* In the preamble to the proposed rule, we said there may be paternity establishment cases where under State law or procedures, it is inappropriate to establish a support order (e.g., if the noncustodial parent is a minor, incapacitated, or incarcerated). Such a case would still be counted as disposition if a duty to support is established within the timeframe (58 FR 62599, 62611). One commenter asked what we meant by "duty to support". In the commenter's State, it is a civic duty for any parent to support his or her child; the commenter asked if this duty to support by operation of law would suffice for disposition if the parent was a minor, incapacitated, incarcerated, or financially unable at the moment.

Response: A duty to support, in this instance, means a judicial or administrative determination of the parent's legal obligation. A determination, under the guidelines or based upon specific circumstances, that there is *no* present ability to pay support would count as a disposition.

7. *Comment:* We received two comments asking if exclusionary genetic test results, obtained from testing which was completed voluntarily or by stipulation prior to the filing of an action with a court or administrative authority, would count as disposition under expedited process.

Response: Such test results will count as disposition if they are obtained *after* "service of process", as broadly defined for purposes of the timeframes at §§ 303.4(d) and 303.101(b)(2)(i). (See discussion above). Because we are defining "service of process" broadly, "service of process" may occur prior to filing of an action with a court or administrative authority.

If exclusionary test results are obtained and the man is eliminated from consideration as a possible father *before* a formal commencement of proceedings, the case would be excluded from the universe of cases evaluated under the expedited process timeframe, and would count neither as a "success" nor a "failure" under the timeframe. Presumably, in exclusion cases, the mother would be interviewed again and location efforts would begin to find the actual father.

8. *Comment:* We received several comments requesting that a temporary order count as disposition under the expedited process timeframe.

Response: A temporary order counts as disposition under the expedited process timeframe provided that the amount of support is determined in accordance with the State's guidelines for setting child support awards or there is a finding on the record that the application of guidelines would be unjust or inappropriate as specified under § 302.56.

9. *Comment:* Several commenters objected to the proposal that documented unsuccessful efforts to serve process would no longer stop timeframes. Commenters argued that some parents move frequently or purposely evade service making it virtually impossible to complete service in a short period of time.

Response: In response to commenters, the new timeframe at § 303.4(d) stops if the IV–D agency documents unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c). This is consistent with the program standards timeframes previously at §§ 303.4(d) and 303.5(a)(1).

10. *Comment:* Several commenters suggested that certain cases be excluded from expedited processes. Specifically, commenters suggested excluding cases where it would be difficult to meet the timeframes, such as where the noncustodial parent is in the military, has filed for bankruptcy, or lives in another State. According to one commenter, without such an exclusion, a IV–D agency will be forced to dismiss (and later refile) difficult cases in order to meet the timeframe. In addition, some commenters suggested excluding cases where there is no legally reachable income on which to base an award or where the noncustodial parent has no ability to pay. According to commenters, actions to establish orders in such cases are futile and a waste of time and resources. Finally, one commenter asked that cases in which the custodial parent fails to cooperate be excluded from expedited process timeframes.

Response: Although paternity cases involving alleged fathers in the military service, or who have declared bankruptcy, or who live in a different State often present additional challenges and may be more complicated, we are not excluding such cases from the expedited process requirement. Although some cases present more difficulty, all cases should be worked as quickly as possible. Nor are we aware of any empirical data upon which to identify and exclude particular categories of cases from expedited process. Even in the previous illustrations, we believe that actions can generally be pursued, and most cases will be resolved within the established timeframes. As an alternative to wholesale exclusions, we developed a 90 percent standard in recognition that it may be difficult to meet the timeframe in certain cases. This approach allows the IV–D agency to exceed the timeframes in a small percentage of cases, but does not allow the IV–D agency to automatically exempt entire categories of cases from receiving timely services.

States should not dismiss a case simply to meet the timeframe. We believe the timeframe is reasonable for the great majority of cases, and IV–D agencies are allowed to exceed the timeframe in 10 percent of cases. Section 303.4(e) requires that if the court or administrative authority dismisses a petition for a support order without prejudice, the IV–D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time. As part of this process, the reason for dismissal should be documented in the case record. A case dismissed for inappropriate reasons

(i.e., simply to meet the timeframe), will be considered, for audit purposes, an error, rather than a success, under expedited process requirements.

Furthermore, we are not allowing IV–D agencies to exclude from expedited process cases where there is no legally reachable income on which to base an award or where the noncustodial parent has no ability to pay. Prior to support establishment action (e.g., the discovery process, a hearing), it may be impossible to accurately identify cases where a noncustodial parent actually has no reachable income or ability to pay. Furthermore, even if a noncustodial parent currently has little or no ability to pay, his earnings may increase in the future. When that time comes, it may be easier for the IV–D agency to collect support if a nominal support order, or at least a finding of the duty to support, was previously entered. Although we are not explicitly excluding cases where the noncustodial parent has no ability to pay, in certain circumstances a determination that it would be inappropriate to establish a support order in a case (e.g., if the noncustodial parent is a minor, incapacitated, or incarcerated) may count as a disposition under expedited process requirements, as explained previously. See comment 6.

Finally, as mentioned above, one commenter requested that AFDC cases where the custodial parent fails to cooperate (but IV–A fails to sanction noncooperation quickly) should be excluded from expedited process timeframes. Since the expedited process timeframe begins with service of process, cases where the custodial parent refuses to cooperate from the outset of the case are not a concern in meeting the timeframe. However, in other cases, the custodial parent may only refuse to cooperate later in the case (e.g., refusal to cooperate with genetic testing). The IV–D agency should clearly document the custodial parent's noncooperation and notify the IV–A agency for action in accordance with 45 CFR 232.12(c). If noncooperation is the reason for the IV–D agency's inability to move forward in a case (e.g., the custodial parent refuses to provide a blood sample for genetic testing), and the IV–D agency has taken all appropriate action, the case will be excluded from the audit sample.

11. *Comment:* One commenter requested clarification regarding the extent to which States can claim credit under expedited process for acknowledgments of paternity obtained through a hospital-based program or simple, civil acknowledgment process.

Response: Under the new expedited process requirement, a State can only count a case as a success once disposition is reached—i.e., once a support order is established/recorded or action is dismissed. Paternity establishment by itself, without a support order or determination that an order for support is not appropriate, will not count as a disposition, regardless of whether the paternity was established by voluntary acknowledgment or some other method. However, as States implement hospital-based and other simple voluntary acknowledgment programs, paternity will be presumed or established in more instances prior to the opening of a IV–D case. In these cases, the IV–D agency will be able to move directly to establishing a support order, making it easier to meet the expedited process timeframe.

12. *Comment:* In the preamble to the proposed rule, we solicited comments regarding the proposal to begin paternity establishment timeframes at the same point in all cases, regardless of whether a child is younger than six months of age. Some commenters supported the proposal, while others opposed it. Opponents argued that some jurisdictions refuse to order genetic testing on infants under six months of age. According to these commenters, many of the new genetic testing technologies which make testing on infants easier have not yet been widely accepted in the scientific community, have not been certified by the American Association of Blood Banks (AABB), and are not covered by most States' existing contracts with genetic testing laboratories. One commenter also expressed concern about the workload impact on hospital staff (in cases involving umbilical cord sampling) and the fiscal impact on IV–D agencies and unmarried parents (due to the higher cost of new testing technologies). Another commenter suggested that a six-month delay was inconsequential since fathers in many AFDC cases provide little or no support.

Response: The one-year paternity establishment timeframe at former § 303.5(a)(2) included an exception for cases needing paternity establishment where the child was less than six months old. Under this exception, the timeframe did not begin in a case until the child reached six months of age. The exception reflected the practice of waiting to draw blood samples for certain genetic tests until after the infant was at least six months old.

At the time that the six-month-old-child exception was included in regulation, we indicated, in the preamble to the Standards for Program Operations final rule, that in the future we would reexamine the exception in light of testing which does not require the child to be six months old (54 FR 32284, 32301). We have now reexamined the exception and deleted it. The expedited process timeframe at § 303.101(b)(2)(i) begins with the date of service of process regardless of the age of the child.

According to genetic testing laboratories that we contacted, genetic tests are valid when performed on a child under six months of age, as long as certain tests are not used. The American Association of Blood Banks (AABB) states that children under six months of age should not be tested for two serum protein genetic markers (Gm and Km). Testing for these markers could reveal maternal typings, rather than those of the child, in cases involving infants. However, many other tests, including those which examine red blood cell antigens, human leukocyte antigens (HLA) and deoxyribonucleic acid (DNA) can be accurately performed on infants.

Although difficulty may be encountered in drawing a sufficient quantity of blood from a small infant in some cases, emerging technology helps to address this problem. This technology includes DNA testing which can be performed using a single spot of blood (obtained, for example, by a heel stick), DNA testing (where samples of the buccal cells lining the child's cheek are taken on a swab from inside the baby's mouth), and umbilical cord sampling where blood samples are taken from the newborn's umbilical cord. As a consequence, there is no longer any scientific necessity or basis for allowing the six-month-of-age exception.

In response to commenters concerns, we are not *requiring* that States use these new genetic testing technologies. We believe that Federal timeframes allow sufficient time even if such technologies are not used. Because the top tier of the expedited process timeframe is 90 percent, States are allowed to exceed the timeframe in 10 percent of cases.

While removal of the six-month exception does not *require* the use of certain genetic testing technologies, it does encourage States to initiate the paternity establishment process as soon as possible in each case. Even in a case where the father can initially provide only minimum support, the father's income may increase with time. Furthermore, it is often easier to locate the father and obtain his cooperation soon after birth. The earlier paternity is established, the sooner the child will have access to the father's medical

benefits, medical history information, a relationship with the father, child support, and other benefits resulting from paternity establishment.

13. *Comment:* We received a number of comments regarding the application of the expedited process establishment timeframe to interstate cases. One commenter suggested that we create a separate timeframe for interstate cases. The commenters also requested clarification and made suggestions regarding which state would be responsible for meeting the timeframe and when the timeframe would start in an interstate case.

Response: As stated in § 303.101(b)(1), expedited process requirements apply to both interstate and intrastate cases. We have not created a separate timeframe for interstate cases. This policy is consistent with policy regarding other timeframes, including program standard timeframes, which apply to interstate cases as well as intrastate cases. We believe the expedited process timeframe is reasonable for most interstate cases, and IV–D agencies are allowed to exceed the timeframe in 10 percent of cases. The timeframe at § 303.4(d) also applies to both interstate and intrastate cases.

The responding State is responsible for meeting timeframes, including the expedited process timeframe, in interstate cases. Regarding the starting point of the timeframe in an interstate case, the new expedited process timeframe begins with the date of service of process in the responding State. The timeframe at § 303.4(d) begins upon receipt of a case by the local IV–D agency in the responding State responsible for the establishment of support orders. This approach is consistent with previously-issued policy regarding program standard timeframes that begin with the date of location (e.g., see preamble to final regulations on standards for program operations published August 4, 1989 at 54 FR 32284, 32300).

14. *Comment:* One commenter requested clarification regarding whether the new expedited process provision at § 303.101(b)(2)(iii) required States to use long-arm jurisdiction. The commenter suggested that States should have flexibility to determine, on a case-by-case basis, whether or not to use long-arm in a case.

Response: In paternity cases, Federal regulations at § 303.7(b)(1) require a State to use its long-arm statute, if it has such a statute, where appropriate. OCSE also encourages, but does not require, States to use long-arm statutes in support establishment cases.

In developing the new expedited process timeframe, we considered its impact on the use of long-arm jurisdiction. Cases brought under long-arm jurisdiction may require some additional work to establish jurisdiction over a nonresident. Therefore, IV–D agencies may have more difficulty meeting the expedited process timeframe in cases involving nonresident alleged fathers. Because we do not want the timeframe to force a IV–D agency to refer a case involving a nonresident alleged father/obligor to the State of his residence rather than asserting local jurisdiction over him whenever possible, a State will be given "credit" for disposing of a case using long-arm jurisdiction. Under § 303.101(b)(2)(iii), for purposes of the expedited process timeframe for paternity and support order establishment, in cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process upon the alleged father or noncustodial parent, the case may be counted as a success within the 6-month tier of the timeframe, regardless of when disposition occurs in the 12-month span following service of process.

15. *Comment:* One commenter asked how a case would be evaluated under the audit if action to establish paternity or support using long-arm jurisdiction is "in process" at the time of the audit but there has been no disposition.

Response: A case where long-arm jurisdiction is used will be excluded from consideration under the audit for both the 6- and 12-month tiers of the expedited process timeframe at § 303.101(b)(2)(i), if action to establish paternity or support was still in progress and the 12-month-tier of the timeframe had not yet expired during the audit period. If the 12-month-tier of the timeframe had expired during the audit period without disposition, the case will count as an error under the 12-month standard but will be excluded from an evaluation of the 6-month standard.

Generally, for cases worked by means other than long-arm jurisdiction, a case will only be evaluated under a particular timeframe if the timeframe expires during the audit period. However, if a timeframe expires during or after the audit period for a case with disposition within the audit period, the case will count as a success. If a timeframe expires during the audit period for a case without disposition within the audit period, the case will count as an error.

16. *Comment:* One commenter asked if actions to establish medical support orders would still be subject to the expedited process timeframe.

Response: Yes, establishment of medical support orders will be subject to the expedited process timeframe at § 303.101(b)(2)(i). However, since medical support is usually included as a part of the child support order, not as a separate order, this should not be an issue.

b. *Enforcement Timeframes.*

1. *Comment:* Several commenters argued that expedited process timeframes for enforcement should not be deleted. They stressed the importance of ensuring that orders are enforced in a timely manner.

Response: We agree about the importance of timely enforcement. However, to simplify and clarify enforcement requirements, we have deleted the expedited process timeframe for enforcement formerly at § 303.101(b)(2). Under this timeframe, from the date of service of process, disposition had to occur within 3 months for 90 percent of cases, 6 months for 98 percent of cases, and 12 months for 100 percent of cases. The scope of this timeframe had been limited, applying only to enforcement activity in a State's administrative or judicial system that occurred after service of process. The timeframe was further limited since in the preamble to the final regulations implementing the Child Support Enforcement Amendments of 1984 (50 FR 19608, 19629) we stated that "we did not require State's expedited processes to provide for bench warrants and subpoena and contempt powers."

It is much simpler and clearer to have one timeframe at § 303.6(c)(2) covering all enforcement activities (other than income withholding and Federal/State income tax refund offset). This timeframe will ensure that States expeditiously enforce child support orders in IV–D cases. It requires enforcement action within no more than 30 calendar days (if service of process is not needed) or 60 calendar days (if service of process is needed) of identifying a delinquency or other support-related noncompliance, or location of the absent parent, whichever is later.

The preamble to the final rule governing standards for program operations (54 FR 32284, 32302) indicated that the 30/60 calendar-day timeframe at § 303.6(c)(2) would apply to "consent procedures and administrative procedures such as debt collection, telephone contact, demand letters, or publication of names". However, we are now expanding the scope of this timeframe to cover *all*

enforcement techniques other than wage withholding and State/Federal income tax refund offset. This includes, but is not limited to imposing liens on real or personal property; requiring the obligor to post security, bond, or other guarantee to secure payment of overdue support; reporting delinquency information to a consumer credit agency; withholding unemployment compensation; and other State remedies.

The timeframes at § 303.100 will continue to apply in wage withholding cases. These regulations, for example, include timeframes for sending advance notice to the obligor in initiated withholding cases, timeframes for procedures to contest withholding, and timeframes for interstate wage withholding.

2. *Comment:* Two commenters contended that the timeframe at § 303.6(c)(2) did not allow sufficient time for some enforcement actions. One of these commenters thought the timeframe would be particularly difficult to meet when using judicial enforcement remedies such as contempt. The other commenter pointed out that it was not cost-effective to have frequent enforcement hearings in rural areas, due to the travel costs for IV–D attorneys and the tribunal's decisionmaker. Another commenter maintained that the 30/60 day timeframe was sufficient, provided that States adopt high volume enforcement procedures.

Response: The timeframe at § 303.6(c)(2) has been in effect since October 1, 1990 under regulations governing standards for program operations (54 FR 32284). We believe it is reasonable to expect that a support order be enforced within 30/60 calendar days (depending on whether service of process is necessary) of identifying a delinquency or location of the absent parent, whichever is later, as required by § 303.6(c)(2). The timeframe allows for additional time in cases requiring service of process.

In addition, we concur with the commenter who recommended that States adopt high volume enforcement procedures. Through extensive use of automation and administrative processes, a State can effectively and swiftly enforce a large number of cases.

We are aware, however, that there may be some instances where it is difficult to meet the timeframe. Use of the 75 percent standard for audit purposes recognizes that action may take longer in some cases (such as cases involving the Soldiers and Sailors Relief Act (50 U.S.C. 501–591)). Furthermore, the new "credit for results" provision of the audit regulation at § 305.20(a)(4)(iv) will consider the State to have taken appropriate action for audit purposes, regardless of whether timeframes at § 303.6 and other specified timeframes are met, if, in a case where wage withholding is not appropriate, the State uses at least one enforcement technique (in addition to Federal and State income tax refund offset) and a collection is received during the audit period.

3. *Comment:* Two commenters questioned how often, if at all, a IV–D agency must take enforcement action in accordance with § 303.6(c)(2) in chronic enforcement cases where the obligor has neither the assets nor the intent to comply with the order. One of the commenters argued that attempting enforcement action in a case where the IV–D agency knows the noncustodial parent cannot pay is a waste of resources.

Response: Enforcement action may be appropriate even in cases where the IV–D agency believes that the obligor cannot pay since it is sometimes difficult for the IV–D agency to detect "hidden" assets or income. Enforcement action such as a contempt may stimulate an obligor to pay, even if he initially claimed he was unable.

States have discretion with respect to which enforcement techniques other than wage withholding and Federal/State income tax refund offset are appropriate, as long as there is compliance with Federal regulations, State procedures, and guidelines developed under § 302.70(b) which outline when it is not appropriate to use certain enforcement techniques.

At a minimum, a IV–D agency must take any appropriate enforcement action (other than income withholding and Federal/State income tax refund offset) within 30 calendar days of identifying a delinquency, or 60 calendar days if service is required. Once initial enforcement action is taken, if arrears are paid, but the obligor later falls into arrears again, the IV–D agency must again take any appropriate enforcement action within the 30/60-calendar-day timeframe.

If an obligor fails to resume payments and/or pay arrearages after initial enforcement actions are taken, the IV–D agency should determine on a case-by-case basis the frequency with which it will take follow-up enforcement action (besides income withholding and Federal/State income tax refund offset). Under § 303.6(c)(4), a IV–D agency must, in cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future, and take an enforcement action in accordance with the requirements of § 303.6 at that time.

Certainly, an obligor who claims no ability to pay could request a review, and an adjustment of the support order amount can be pursued if appropriate.

4. *Comment:* Another commenter suggested that the terms "taking an enforcement action" and "enforcement action taken" in § 303.6(c)(2) need to be defined.

Response: Within the 30/60-calendar-day timeframe at § 303.6(c)(2), the IV–D agency must "take" appropriate enforcement action. This means that the IV–D agency must, within the timeframe, commence and complete appropriate enforcement action that will potentially result in collections. Collections do not necessarily have to be received within the timeframe as a result of the enforcement action in order for the action to be considered "taken" and counted as a success under the timeframe. Examples of enforcement actions that would be considered "taken" for purposes of the timeframe at § 303.6(c)(2) include, but are not limited to: Reporting arrearages to a credit reporting agency, imposing a lien against real or personal property, suspending or denying a professional or driver's license, or seizing property.

5. *Comment:* We received comments seeking clarification regarding how enforcement timeframes would be audited. One commenter asked if the 75 percent audit standard applied to the enforcement timeframes. Another commenter asked if a State that was out of compliance with the enforcement timeframes would also be out of compliance with expedited process requirements.

Response: The 75 percent audit standard applies to enforcement timeframes at §§ 303.6(c)(2) and 303.100. Failure to meet these timeframes in 75 percent of cases may result in an audit finding under the enforcement criteria at § 305.20(a)(3)(iii), not the expedited process criteria at § 305.20(a)(5).

c. *Judges as Presiding Officers.*

1. *Comment:* Several comments related to the use of judges in expedited processes. Favorable comments supported the results-oriented nature of the proposal. One commenter said the proposal would assist small counties that cannot justify the hiring of a referee or magistrate. Other commenters objected to the proposed change, arguing that it would weaken the use of administrative processes.

Response: As we stated in the proposed rule, with the addition of

paternity establishment to expedited processes, it is necessary to remove the prohibition against the use of judges as presiding officers in expedited processes. Currently, most States use judges as decisionmakers in the majority of paternity cases. Even States that effectively use an administrative process within the executive branch of government to process uncontested cases frequently transfer contested cases to the judicial system. If the Federal government suddenly and completely banned the use of judges as presiding officers in paternity establishment cases, the disruption caused by this abrupt change would offset the benefits of including paternity establishment in expedited process.

Our approach gives States more flexibility while still achieving the desired outcome—expeditious processing of cases. By allowing States to use judges, States have the option to carry out the duties of a presiding officer by either a judge or a judge surrogate, according to their needs. A judge surrogate may be a hearing officer, referee, court master or other decision maker outside of the traditional court system.

Allowing the use of judges as presiding officers is consistent with the statute. States have the option of using their existing judicial system or administrative processes for expedited processes as long as actions are performed in an effective and timely manner. The Act does not prohibit using a judge as the presiding officer for expedited processes.

This revision is in no way a suggestion that States should abandon established quasi-judicial or administrative processes, nor is it meant to discourage other States from implementing such procedures. Many States have found administrative process to be crucial in expediting case processing. States currently using their judicial systems for paternity and child support cases may need to reconsider their present decision-making process in order to meet the new expedited process timeframes. Our intent in allowing judges to serve as presiding officers is to maximize the State's capability of operating a child support program that is effective and efficient and meets the needs of children.

2. *Comment:* There were a few comments recommending deleting the prohibition of FFP for judges. One commenter asked whether FFP would be available under expedited judicial process for the costs of a court bailiff, court reporter, court secretary, court personnel, court space and court administrative costs resulting from IV–D activities.

Response: Federal funding continues to be available for administrative costs associated with decisionmakers in administrative and quasi-judicial processes but is unavailable for costs of compensation of judges and other judicial expenses. Under § 304.21(b), FFP is *not* available for the costs of:

(1) Service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the cost of such fees;

(2) compensation (salary and fringe benefits) of judges;

(3) travel and training related to the judicial determination process incurred by judges;

(4) office-related costs, such as space, equipment, furnishings and supplies, incurred by judges; and

(5) compensation (salaries and fringe benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges. Administrative and support staffs of judges include court bailiffs, court reporters, court secretaries, and other court personnel.

Federal regulations at § 304.10 provide that, as a condition for FFP, the provisions of 45 CFR part 74, which establish uniform administrative requirements and cost principles, shall apply to all grants made to States under the IV–D program. Section 74.171 states that the rules for determining which services and activities meet the necessary expenditure test for Federal funding are provided by the Office of Management and Budget's (OMB) Circular A–87, "Cost Principles for State and Local Governments." Attachment A., Section C.1.a. provides that allowable costs must "(b)e necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State (or) local * * * governments."

We do not believe compensation of judges and related court costs are allowable under the prescriptions of OMB Circular A–87. In the context of the IV–D program, expenditures are considered general State expenses if they are incurred as a result of general State requirements which are neither dependent on nor confined to the IV–D program. Most judges and courts have multiple responsibilities besides child support enforcement, and it would be difficult or impossible to accurately determine which costs are attributable to child support activities.

Furthermore, OMB has proposed revisions of Circular A–87 issued October 14, 1988 (53 FR 40359). Attachment B, section 21.a of these proposed revisions specifies that general costs of government interagency services for which FFP is not available include "(c)ost of the judiciary branch." While such an explicit reference to "cost of the judiciary branch" is not contained within the current version of Circular A–87, the proposed language indicates OMB's intent to treat such costs as general State or local government expenses.

In addition to the OMB policy, the Senate Committee on Finance, in its report on H.R. 4325, which became the Child Support Enforcement Amendments of 1984, Pub. L. 98–378, stated that "(i)t is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program." (See S. Rep. No. 387, 98th Cong., 2d Sess. 23 reprinted in 1984 U.S. Code Cong. & Admin News 2397, 2419).

Finally, while we have amended the expedited process requirements to give States the flexibility to determine the best way, including the possible use of judges, to expedite their procedures, we strongly urge States with administrative and quasi-judicial procedures to continue using such procedures. We also want to encourage other States to consider adopting such procedures. If we were to provide FFP for judges and related court costs, States with court-based systems would have less of an incentive to consider alternative, and potentially more expeditious, processes for providing services.

3. *Comment:* One commenter requested clarification regarding which expedited process requirements a State could request an exemption from under § 303.101(e).

Response: The provision allowing exemptions from expedited process requirements is codified at section 466(a)(2) of the Act. By deleting the requirement that a presiding officer may not be a judge, these final regulations should reduce the necessity for exemptions for expedited processes. In fact, we do not believe any of the expedited process requirements would now be a logical basis for an exemption

Since exemptions were routinely granted to jurisdictions using judges that meet the expedited process timeframes, this rule allows jurisdictions that meet the timeframes to use judges without having to go through the exemption request and renewal processes. However, jurisdictions which use judges will be subject to audit scrutiny to determine if they are

meeting the required expedited process timeframes, and will be subject to possible penalty if they fail to meet the timeframes. This approach will save time and money for both local and State agencies and the Federal Government, without sacrificing expediency in case processing.

d. *Other Issues.*

1. *Comment:* We received three comments regarding the requirement at § 303.101(c)(3) that parties must be provided a copy of the paternity determination and support order. One commenter asked if "paternity determination" includes a voluntary acknowledgment. Another commenter said furnishing an actual copy of the determination/order is not possible when a party cannot be located, and suggested that the parties be provided notice, rather than a copy, of an order/determination at the last known address. The third commenter requested clarification of initiating and responding State responsibilities under this requirement in interstate cases.

Response: Section 303.101(c)(3) requires that the parties be provided a copy of any voluntary acknowledgment of paternity, paternity determination, or support order that is obtained or established through the IV–D agency's expedited process. We added voluntary acknowledgment of paternity to this requirement in response to the comment mentioned above. States must send an actual copy of the acknowledgment, determination, or order, not simply a notice. If allowable under State law and procedure, the copy may be mailed to the last known address of each party.

Under this requirement, copies should be provided to both parents in AFDC and non-AFDC cases, and to any other State which has an assignment of support rights in the case.

In an interstate case, the responding State should send a copy to the IV-D agency in the initiating State, rather than directly to the parent residing in the initiating State. The initiating State would then be responsible for forwarding a copy to the parent residing in the initiating State.

2. *Comment:* We received two comments regarding changes to State automated systems necessitated by the new expedited process requirements. One commenter asked if enhanced Federal funding will be available for making changes to State systems to accommodate changes to expedited process requirements. Another commenter asked that the effective date of the expedited process requirements be delayed a year after issuance of final regulations to permit States to make necessary changes on automated systems to track the new standards.

Response: FFP at the enhanced rate is available for development of statewide computerized support enforcement systems, including system changes necessitated by changes in Federal law (e.g., modifications necessary to implement changes to expedited processes) until September 30, 1995. If modifications to the statewide computerized support enforcement systems are made after that date, regular FFP is available for the costs of those system modifications. The Child Support Enforcement systems certification review mandated by § 302.85 will be based on the functionality to support requirements from the Family Support Act of 1988 and preceding requirements. If, however, a State requests certification subsequent to publication of these rules, we would permit the State the option of designing their paternity timeframes to meet OBRA '93 requirements.

Since the statute has an effective date of October 1, 1993 (or later if enactment of State law is necessary to conform to the requirements), the effective date of these regulations cannot be delayed further. Although we recognize the demands placed upon States by the new requirements, we believe that Congress did not intend to delay implementation of these requirements beyond the effective date of the statute.

3. *Comment:* One commenter asked if non-compliance with expedited process requirements would be treated as an audit issue or a State plan issue.

Response: Section 302.70(a)(2) requires State plans to include laws and procedures for expedited processes. Therefore, failure to have relevant laws and procedures could result in disapproval of a State plan. States may need laws and procedures to implement required safeguards under § 303.101(c) or functions under § 303.101(d).

Section 305.20(a)(5) requires that a State, as a condition of being determined in substantial compliance with title IV-D requirements, meet the requirements for expedited processes under §§ 303.101(b)(2) (i) and (iii), and (e). Therefore, failure to meet expedited process timeframes could result in a determination of substantial noncompliance and imposition of the penalty.

2. Audit Provisions.

In response to the Notice of Proposed Rulemaking published September 9, 1993, in the **Federal Register** (58 FR 47417), OCSE received over 30 comments from State and local child support agencies and advocacy organizations. An overwhelming number of these commenters expressed their endorsement of, and appreciation for, OCSE's efforts to simplify audit regulatory provisions by consolidating and eliminating restatements of other provisions. Many commended the transition to a more results-oriented, outcome-focused process for conducting audits of State program performance. Following is a summary of the comments received and our responses:

Timing and Scope of the Audit—§ 305.10

One comment was received regarding this provision, essentially indicating support for OCSE's use of government auditing standards as promulgated by the Comptroller General of the United States.

State Comments: § 305.12

1. *Comment:* Several commenters expressed concern that not advising States of information needed to conduct the audit until the time of the entrance conference will result in delay. They suggested that notice of such information requirements should be supplied in advance of the entrance conference. One commenter requested additional lead time to prepare for an audit. Another commenter urged that regulations be consistent with current audit practices relating to advance notice so as to allow States a sufficient preparatory period.

Response: Written notice of an impending audit and information needed to perform the audit will be given to States, as is currently done, at least one quarter prior to the entrance conference. Changes to § 305 12 only relate to the entrance conference, at which time auditors will explain how the audit will be performed and make any necessary arrangements for the field work of conducting the audit. Providing notice of the scheduling of an audit one quarter in advance of its commencement is consistent with long-standing government auditing standards.

2. *Comment:* One commenter requested that interim audit reports be published closer in time to the conclusion of the field work enabling States to be more responsive in identifying and rectifying deficiencies.

Response: OCSE is working to improve its performance in this area. In addition, any State, at any time, may request an oral briefing of the status of an audit-in-progress of its IV–D program. Furthermore, the changes made by this regulation to streamline and consolidate the approach to the audit should also expedite the process of issuing reports. Also, this process will be expedited as more States give

the area audit offices access, via modems or terminals, to their automated systems and improvements are made to systems tools used to conduct audits in automated environments.

Effective Support Enforcement Program—§ 305.20

1. Revised Definition of Substantial Compliance.

a. Ten percent materiality test.

1. *Comment:* Several commenters questioned the use of a ten percent materiality standard in determining criteria which are included in a determination of substantial compliance. A few suggested alternative tests reflecting other percentages. One commenter suggested that any criterion that does not further the goal of conducting a results-oriented analysis should be eliminated. Two commenters expressed concern that application of the ten percent materiality test should be limited to initial audit results, indicating that application to follow-up audit findings could potentially increase the scope of criteria which are included in a determination of substantial compliance.

Response: The materiality concept is a widely-accepted practice in the auditing profession. Materiality is defined as the relative importance or relevance of an item included in, or omitted from, the analysis of operations. Generally, a benchmark of ten percent, or a more stringent level (e.g., five percent) is used to quantify materiality. Among the qualitative factors which affect materiality are newness of the activity or changes in its condition, results of prior operations, level and extent of review or other form of independent oversight, adequacy of internal controls for ensuring compliance with laws and regulations, and public perceptions and political sensitivity of the areas under audit.

In the context of the child support program, the test was administered against findings for which a penalty was imposed in past triennial and annual State program results/performance measurements audits, but not to follow-up audits conducted to determine whether a State has come into substantial compliance following a corrective action period.

2. *Comment:* Three commenters requested that the ten percent materiality test should be applied subjectively to individual States to recognize prior State performance in the application of the test. Another commenter recommended a "tiered" approach through which audit criteria are categorized in assigned priority levels based on their significance to effective and efficient IV–D program operations.

Response: Audits are designed to be objective so that all States are audited in relation to a consistent standard. The overall approach to the audit of State child support enforcement programs, as specified in this regulation, is an interim step under current law. Further revision and expansion of the results-orientation to the evaluation of State IV–D programs will be addressed as part of the President's Welfare Reform bill.

3. *Comment:* One commenter questioned the frequency under which OCSE will apply the ten percent materiality test in order to revise or update the criteria to be evaluated in an audit.

Response: The ten percent materiality test was first applied to initial and annual audit reports issued as of September 1990 using the prior audit regulations. Subsequent reapplication for audit reports issued through November 26, 1993 produced consistent findings and confirmed earlier results as to the incidence of failure across 30 program criteria, all of which bear directly on the effectiveness of IV–D program operations. As we continue to revise the audit process, we will reapply the materiality test and make necessary changes when deemed appropriate.

4. *Comment:* One commenter contended that because the ten percent materiality test, by its nature, focuses on areas of noncompliance, States' strengths, best practices, and effective management techniques are not identified. The commenter urged that such strengths should be emphasized as part of the audit. Another commenter proposed that OCSE clarify that any criteria excluded from substantial compliance evaluation can still be evaluated and be included in management recommendations furnished to the State as part of the audit findings. Another commenter, concurring with the use of management recommendations, suggested that such recommendations should incorporate best practices of all States in order to assist in program improvement for individual States.

Response: Program audits are designed to determine whether State child support enforcement programs operate in conformity with Federal law and regulations. Auditors may still examine requirements that are not contained in § 305.20, but deficiencies would be noted in the Audit Report as management recommendations. OCSE uses numerous other mechanisms to identify and share exemplary practices among the States, including publications, presentations at conferences, and provision of technical assistance (including assistance extended through the ten ACF regional offices).

5. *Comment:* One commenter requested clarification as to the criteria which will not be audited as a result of satisfying the ten percent materiality test.

Response: As a result of applying the ten percent materiality test to initial and annual audit reports issued through November 26, 1993 using the prior audit regulations, the following criteria were eliminated from consideration for purposes of assessing substantial compliance: Cooperative arrangements; bonding of employees; procedures for making information available to consumer reporting agencies; payments to the family; spousal support; payment of support through the IV–D agency or other entity; single and separate organizational unit; incentive payments to States and political subdivisions; retroactive modification of child support arrearages; imposition of late payment fees on non-custodial parents who owe overdue support; State financial participation; fiscal policies and accountability; provision for withholding in all child support orders (§ 303.100(i)); 90 percent Federal financial participation for computerized support enforcement systems; recovery of direct payments; and publicizing the availability of support enforcement services.

b. New and newly-revised criteria

1. *Comment:* One commenter asserted that new and newly-revised criteria should only be added to the audit criteria after the passage of a substantial period of time. The commenter contended that this approach would take into account the lag time between enactment of Federal law and publication of final regulations, and allow States time to come into compliance before being audited. Another commenter presented just the opposite concern, arguing that the practical effect of the audit standards will not apply for several years in many States. This commenter urged OCSE to publish the final regulations as quickly as possible and make the new audit standards applicable not only to any audit conducted after the date of publication, but also any audit in progress on the date of publication.

Response The effective date of Federal statutory and regulatory requirements cannot be ignored. We have reviewed State implementation of the standards for program operations for management information and action, but not for penalty purposes. Furthermore, auditing

new or newly-revised program requirements using related audit criteria ensures that expanded program mandates are being correctly interpreted and expeditiously applied. With respect to requirements under the Family Support Act, final regulations have already been published and States will be audited under such regulations for audit periods that begin on or after the date of publication of this final rule. Allowing any further extension of time before audits of State compliance with these requirements would be unwarranted. However, audits in progress as of the date of publication of these rules will be governed by the audit standards that were in effect at the start of the audit. These final rules will apply to audits conducted for any periods which begin on or after publication of this rule.

2. *Comment*: Several commenters expressed concern that the streamlining of audit regulations and grouping of criteria will negatively impact audit results, giving the appearance of failing to meet a comprehensive criterion, when in actuality the deficiency only relates to a weakness in a single area.

Response: By grouping criteria, OCSE will be better able to focus upon State delivery of required program services rather than specific incremental steps that occur in performing each program function. Grouping relates to the manner in which OCSE evaluates States' performance, rather than to what is evaluated. For a number of years, OCSE has evaluated several enforcement techniques under the audit in this manner and determined that this is an effective and efficient process. Under the regulation, a more streamlined approach to conducting audits will improve the ability of OCSE and States to more effectively and efficiently identify program deficiencies.

3. *Comment*: One commenter suggested that efforts by OCSE to limit the scope of audits should be designed to ensure that audits can be conducted and completed in less time and with fewer State resources. The commenter expressed the belief that it was unclear whether the proposed new definition of substantial compliance would, in fact, actually reduce the need for States to dedicate substantial time and resources to the audit process.

Response: In order to reduce the scope of the audit to the maximum extent possible, we have deleted from inclusion under the definition of substantial compliance audit criteria that States failed to meet in 10 percent or less of the initial and annual compliance audits conducted by OCSE under prior audit regulations through November 26, 1993. Under this final rule, we will continue to use criteria that did not meet this test in determining whether the State is in substantial compliance with Federal requirements. In addition, we will, for the first time, conduct audits that evaluate State compliance with the provisions of the Family Support Act of 1988, including standards for program operations, immediate wage withholding, and review and adjustment of support orders.

Federal law mandates that OCSE conduct audits to determine State compliance with Federal requirements, including the provisions of the Family Support Act of 1988. Without revisions made by this regulation to eliminate scrutiny of certain criteria, audits would certainly have taken longer than they currently do, once the Family Support Act requirements were included in the audit. In addition, States can reduce the burden of the audit and facilitate its completion by allowing the area audit office to have on-line access to their State automated systems and by maintaining appropriate records for sample selection and audit purposes. This rule will streamline the audit and is a significant step toward even more results-oriented measurements.

2. Criteria: States Must Meet to be Determined to be in Substantial Compliance.

a. Administrative criteria.

1. *Comment*: One commenter expressed concern that holding States to 100 percent compliance for Statewide operations, reports and maintenance of records, separation of cash handling and accounting functions, and notice of collection are unreasonable and should be lowered to account for unexpected problems.

Response: We are not using a 100 percent compliance standard that involves the review of individual cases. Instead, in auditing these four requirements, OCSE will examine such functions through a review of the automated and/or manual processes a State has in place for meeting these functional requirements rather than the review of individual cases. As a result, the audit will assess the State's overall compliance for meeting these areas.

2. *Comment*: Two commenters objected to evaluating State's compliance with expedited process using a 100 percent standard as excessive and unreasonable. One commenter requested postponement of the 100 percent standard until expedited processes standards for paternity establishment, as required by Federal law as a result of enactment of the OBRA '93, are developed.

Response: We agree with the comment that changes to the expedited processes standard to incorporate paternity establishment should be timed to coincide with these audit rules which apply to audits which begin on and after the date these rules become effective. Therefore, this regulation includes changes to § 303.101 to incorporate paternity establishment. These changes and when they are effective have been discussed previously. The revised expedited processes standard requires compliance in 90 percent, instead of 100 percent, of the cases subject to the standard. Therefore, States are no longer required to meet a 100 percent standard for expedited processes.

3. *Comment*: One commenter requested clarification of whether, for purposes of evaluating a State's compliance with the requirement to provide monthly notice of support payments collected to individuals who have assigned their rights to support, the determination will be based upon whether the State has a process in place for giving notice, or whether audits will focus on determining whether 100 percent of the cases in which notices would be required actually received notices. The commenter shared a concern that an attempted notice that is returned as undeliverable could result in an error finding, rendering the State out of compliance.

Response: A determination regarding a State's compliance with the administrative criteria specified under § 305.20(a)(1) will not be evaluated through an individual case review method. Rather, compliance will be measured on the basis of assessing whether the State has, and uses, an overall system or process designed to meet the specific requirements.

b. *Service-related criteria.*

i. 90 percent standard for evaluating certain case opening requirements and for evaluating case closure.

1. *Comment:* Several commenters objected to the proposed 90 percent standard for review of establishment of cases under § 303.2. They argued that the 90 percent criterion is arbitrary, unrealistic, and too stringent. One commenter remarked that such a standard inappropriately emphasizes initiating services in a case rather than delivering on-going services which are evaluated under a lower standard. Some commenters stressed that application of a rigorous higher standard at a time when States lack fully operational automated systems is excessive and unwarranted.

Response: Case opening is crucial to the child support process. Unless applications are provided promptly and

accepted and processed in a timely manner, necessary IV–D services cannot be provided. In addition, in its focus on the need to create a government that works better and costs less, the Report of the National Performance Review has brought the issue of customer service to the forefront. We are committed to ensuring that the orientation of the child support program is upon delivering needed services to the customers of this program. Therefore, prompt response to a request for services and opening of a case cannot be overemphasized. However, we recognize that § 303.2 contains both case opening and case processing requirements. Program services or case processing requirements should be evaluated using a consistent standard. Therefore, we limit the application of the 90 percent standard to case opening requirements in § 303.2(a) rather than all the requirements of § 303.2. Thus, requirements set forth in § 303.2(b) regarding the establishment of a case record and determination of necessary action on a case will be evaluated under the 75 percent standard. In addition, we will not evaluate the maintenance of case records requirements at § 303.2(c) because they are similar to the reports and maintenance of records requirements at § 302.15(a) evaluated under the audit.

2. *Comment:* Another commenter suggested that auditors should look beyond the details of case opening and closure requirements to determine if action was taken on a case. They urged that if appropriate action was in fact taken, but the State failed to comply with every requirement under "Establishment of cases and maintenance of case records", the State should not be penalized. For example, if a State opened a case and determined necessary action in 30 days rather than the required 20 calendar days, but the action was taken within the audit period, the State should receive credit, without penalty, for having taken appropriate action. The commenter urged OCSE to confirm that a State will be considered to have complied with case establishment requirements, even if the State failed to meet the five-day timeframe in § 303.2(a)(2), or the 20-day timeframe in § 303.2(b), provided that the State took appropriate action on the case during the audit period.

Response: Under the final regulation, the 90 percent standard only applies to requirements governing the establishment of a case under § 303.2(a). We believe that for providing applications and information and accepting applications as filed on the day the application and fee are received, a 90 percent standard is reasonable. Therefore, the 5-working-day-timeframe for sending an application in response to a written or telephone request, and other case opening requirements, will be evaluated for all cases using the 90 percent standard.

As indicated above, the requirements in § 303.2(b) regarding establishment of a case record and determination of necessary action on a case will be evaluated under the 75 percent standard. If the State failed to open a case and determine the necessary action to be taken within the 20-calendar-day timeframe under § 303.2(b) but took necessary action (i.e., established a support order) within the audit period, the State would receive credit.

3. *Comment:* One commenter indicated that a 90 percent standard for case opening and closure is not unnecessarily restrictive, provided that regulations do not propose a negative finding for failure to close a case that could have been closed. Another commenter agreed that States should not be penalized for keeping cases open even if the potential for success is low.

Response: Because case closure is permissive, if a State does not close a case that meets one or more of the case closure criteria in § 303.11, that case will not be subject to audit. As we explained in response to comments in the preamble to the final regulations governing Standards for Program Operations (54 FR 32303), States may elect to establish criteria for closure that are more stringent than those established under Federal rules.

4. *Comment:* One commenter asserted that use of a 90 percent standard to evaluate case closure encourages States to leave cases open in an unworkable status in order to avoid audit penalties. The commenter claimed that the proposed 90 percent standard will allow a State which makes no effort to close unworkable cases to pass the audit on case closure. They further contended that a State which seeks to provide better services in workable cases by closing the unworkable cases could fail the audit if the auditors disagree with the agency's determination to close the case in more than one case out of ten.

Response: The purpose of case closure criteria, and the basis for evaluating case closure at a 90 percent standard is to ensure that States do not close cases erroneously and inappropriately, which could result in denying individuals the services to which they are entitled. It is important for States to recognize that evaluation of a State's case closure process and activities is premised on whether 90 percent of the cases that were in fact closed were closed correctly (i.e., meeting one or more of the 12 enumerated case closure criteria), rather than a determination that 90 percent of the cases that could be closed were closed. We question whether a State would keep unworkable cases open and on its automated system merely to avoid audit scrutiny if a case is closed, especially given that Federal case closure regulations are quite clear and precise.

5. *Comment:* One commenter requested that regulations should provide that a case would not be found out of compliance if the State closed the case in advance of expiration of the 60-day period following notice of proposed case closure provided that if new information was obtained or a request to reopen the case was received, the case would be reopened and worked.

Response: Before a case is closed, all of the requirements in § 303.11 must be met. Therefore, a State which adopts an approach such as that suggested by the commenter would be found to be out of compliance with the requirement at § 303.11(c) which specifies that closure cannot occur until the 60-day period following notice to the custodial parent has elapsed.

6. *Comment:* Several commenters suggested that any standard higher than 75 percent should be gradually phased in. Two commenters urged that any higher standard should be delayed until such time that States have certified computerized support enforcement systems. One commenter asserted that not all States have been audited under the 75 percent standard for the standards for program operations which became effective October 1, 1990. They recommended that OCSE gather some historical data in this area and evaluate State IV–D performance under those standards before changing the standard.

Response: While automation of State child support enforcement programs will enhance States' capabilities for delivering program services, the effective dates of the Family Support Act requirements, including program standards, were not conditioned upon States having computerized support enforcement systems in place. The case opening and closure requirements, effective since October 1, 1990, have never been evaluated using a 75 percent standard. This final regulation will, for the first time, prescribe audit criteria for evaluating case opening, closure and other program standards requirements. The requirements to which the 90 percent standard apply are not dependent upon automated case processing through a computerized support enforcement system, but rather on IV–D caseworkers providing

applications and information to individuals and closing only unworkable cases. As previously stated, OCSE believes that the 90 percent standard for these requirements is reasonable.

7. *Comment:* Several commenters advocated that a 90 percent compliance standard be established for all criteria. One commenter noted that the 75 percent standard results in many cases remaining unworked, claiming that States can circumvent requirements by simply taking some action in 75 percent of the cases even if such actions are not substantive.

Response: This commenter's perception reflects a misunderstanding of Federal title IV–D requirements which require States to take appropriate action in all cases referred for and applying for program services. Requirements for providing and accepting applications and closing cases are clear-cut, definitive, and follow specific steps. They are in the nature of administrative activities, distinguishable from activities connected with providing services which are more complex and which permit greater flexibility and discretion. Providing easy, prompt access to program services and closing only unworkable cases are critical to ensuring that individuals receive appropriate services.

8. *Comment:* One commenter suggested that it would be more appropriate to place opening and closure of cases in the category of administrative criteria rather than in the category of service-related criteria.

Response: Because we believe it is critical to provide access to services, case review rather than analysis of processes is important to determine that the State, in fact, meets the requirements for case opening and closure. Therefore, case opening and closure will be treated as service-related criteria, for which auditing by the case analysis method will be utilized.

ii. 75 percent standard for providing services.

1. *Comment:* Two commenters indicated that the 75 percent standard for providing services was too high. One commenter recommended that the 75 percent standard should be lowered, and phased-in gradually, because of the current lack of automation capability. Several commenters recommended that States should be held to a higher standard than 75 percent compliance, suggesting that a higher standard should be gradually phased-in, in conjunction with the automation requirements. Some recommended it should be phased-in at 80 percent compliance in 1996; 85 percent in 1997; and 90 percent in 1998. Another commenter suggested having a range of standards for different criteria, but added that the acceptable range should never fall below 75 percent.

Response: For over ten years, OCSE has used a 75 percent standard to determine State compliance with Federal program requirements. The standard has proven to be a reasonable expectation of the level of State performance in providing program services. Therefore, we will continue to use the 75 percent standard to evaluate the delivery of program services. Furthermore, under longstanding program requirements, as well as those added by the Family Support Act, comprehensive, statewide automation is not a prerequisite for providing mandatory program services. In fact, most of the requirements States must meet under the Family Support Act will have been effective for over five years before an audit under these regulations will be conducted. We believe that States will have had ample opportunity to implement these requirements prior to being audited to determine compliance.

2. *Comment:* One commenter indicated concern that to achieve substantial compliance on marginally met criteria, the State must actually achieve a rating of at least 81 percent.

Response: This is inaccurate. A State which achieves a compliance level of between 75 and 80 percent for a particular function is considered to have passed the audit and to be in substantial compliance for that function. While such a finding is considered to be "marginal," the finding will not be a basis for determining that the State is not in substantial compliance, and will be referenced in the penalty notification only for the purpose of bringing to the State's attention areas in which the State's performance is borderline. States do not need to specifically address areas of marginal compliance as part of their corrective action plan. Following corrective action, the marginal compliance areas must fall below 75 percent before a State will be considered to have failed that particular criterion.

3. *Comment:* One commenter requested clarification of the requirements for review and adjustment. The commenter suggested that, if a review of an order is properly and timely conducted, but the need to adjust the order is not indicated, the action should be determined to be in compliance.

Response: If review of an order results in a determination that no adjustment is appropriate, and the parties are properly notified of the results of such review and provided an opportunity to challenge such finding, action will be considered to have been taken for audit purposes.

Grouping of Locate Function Within Other Service-Related Categories

1. *Comment:* Concerning the proposal to group "location of non-custodial parents" under other functional components, several commenters favored listing location as part of other criteria because in many cases, in order to proceed on a case, location is an integral component of providing other functional service criteria. Several commenters opposed grouping location with other criteria, urging that it be retained as a separate identifiable criterion.

Response: The location function is not an end in itself but is, in fact, often the initial step to providing all other major program services, including paternity establishment, support order establishment, enforcement, and review and adjustment of child support orders. Therefore, cases requiring non-custodial parent location will be evaluated under the major service or services required for the case. Thus, if a case requires paternity and support order establishment services and the alleged father's whereabouts are unknown, the State must take all appropriate action. If the State did not take appropriate action to locate the alleged father, this would be counted against the State in computing the efficiency rate for paternity and support order establishment. We do not believe that incorporating location within the functional service criteria underestimates or deemphasizes the importance of the location function. On the contrary, it underscores the need to exhaust location sources in order to proceed with necessary services for the case. Moreover, it exemplifies the transition to a more results-oriented audit.

2. *Comment:* One commenter requested clarification about whether the need to relocate an individual before a service (e.g., establishment, enforcement) can be provided stops the applicable timeframe or permits the timeframe to be reset from the date of relocation.

Response: When the State is providing a particular service, such as the establishment of a paternity and/or support order, and determines that a previously located alleged father needs to be relocated (for example, if service of process efforts fail), the establishment timeframe would stop if the State must return the case to the locate function.

The 75-calendar-day and quarterly location timeframes in §§ 303.3(b) (3) and (5) would apply once the case was returned to the locate function. After successful location of the alleged father, the establishment timeframes would start over again. The State's documentation of the events, services provided, and activities in a case will be used in determining the audit criteria appropriate for evaluating the case.

3. *Comment:* One commenter questioned whether a State must use some other enforcement technique in addition to Federal and State income tax refund offset in situations in which the non-custodial parent's address is located but employment information or the location of assets is not known.

Response: States have discretion in determining and selecting what enforcement technique, in addition to Federal and State income tax refund offset, to use in particular cases in which wage withholding may not be available or appropriate (e.g., self-employed). Not all enforcement techniques require employment information or identification of assets (e.g., making information available to consumer reporting agencies). When the State has located the absent parent's address, but employment information or assets are unknown, the State must use an enforcement remedy in addition to Federal and State income tax refund offset. The State may, for example, make information available to consumer reporting agencies, or require an obligor to post a bond or other guarantee to secure payment of overdue support.

4. *Comment:* One commenter also requested clarification of the definition of location for purposes of the audit.

Response: States should continue to focus their location efforts toward successfully ascertaining the whereabouts of obligated parents, their employers, and their assets to take necessary action in the case, using all appropriate sources in accordance with the requirements set forth in § 303.3(b). However, in response to the request for a definition of location for audit purposes, OCSE will determine that a State has met the requirements for location if the State has, at a minimum, checked the following sources, when necessary and appropriate (e.g., a State uses sequential sources until the non-custodial parent is located), to ascertain information concerning the location of the non-custodial parent, his/her employer, and/or the non-custodial parent's assets: The custodial parent; Postal Service; State employment security agency and unemployment data; the Department of Motor Vehicles or the comparable State authority which issues driver's licenses and registers vehicles; credit bureaus; and the Federal Parent Locator Service. These sources were selected because of their proven level of effectiveness in successfully identifying useful location information in most cases. We believe that specification and use of these sources not only standardizes the location process but provides clear guidance to States as to how their location efforts will be evaluated under the audit.

5. *Comment:* Several commenters expressed concern that evaluation of non-AFDC cases under § 302.33 and interstate cases under § 303.7 as independent compliance criteria puts States in situations of double jeopardy. They pointed out that evaluation under both non-AFDC and/or interstate case criteria and under other audit criteria such as paternity establishment, enforcement, or review and adjustment, for example, is actually counting any deficiency twice (or more), thus causing the States to fail under two or more separate criteria as a result of a single deficiency. They requested reconsideration of the requirement that the non-AFDC and interstate case criteria be evaluated separately.

Response: We agree with the commenter and have made the following changes to the proposal. We have deleted the separate audit criteria for evaluating the provision of service in interstate cases and added the provision of services in interstate IV–D cases under §§ 303.7 (a), (b), and (c)(1) through (6) and (8) through (10) to each of the service-related audit criteria at §§ 305.20(a)(3) (ii), (iii), (iv) and (v). Under this final regulation, only those § 303.7 requirements that are unique to interstate cases, §§ 303.7 (a), (b), and (c)(1) through (6) and (8) through (10), and do not involve functions and services otherwise covered by criteria under § 305.20 will be evaluated to determine whether the State is in substantial compliance with the requirement to provide appropriate interstate services. For example, in an interstate support order establishment case, a State will be evaluated for order establishment purposes under § 305.20(a)(3)(ii) to determine whether it is in substantial compliance with the order establishment provisions under §§ 303.4 (d), (e), and (f). The State will be evaluated for interstate purposes under § 305.20(a)(3)(ii) to determine whether it is in substantial compliance with the interstate provisions unique to interstate cases, including the failure to notify the initiating State in advance of the hearing of an order establishment case under § 303.7(c)(8). Therefore, any deficiency identified will only be counted once.

Similarly, we have deleted the separate audit criteria for evaluating services to non-AFDC, non-IV–E individuals and added services to non-AFDC and non-IV–E individuals under §§ 302.33(a) (1) through (4) to each of the service-related audit criteria at §§ 305.20(a)(3) (ii), (iii), (iv) and (v). Under this regulation, only those aspects of § 302.33 unique to non-AFDC IV–D cases, such as acceptance of applications under § 302.33(a)(1)(i), will be examined to determine whether the State is in substantial compliance with requirements unique to providing services to non-AFDC individuals. Determining whether the State provided a particular necessary service (e.g., enforcement) in a non-AFDC IV–D case or in an interstate case, will be addressed under the specific service category set forth under §§ 305.20(a)(3) (ii), (iii), (iv), or (v). The State will be evaluated under the same service category for purposes of determining whether it is in substantial compliance with the services to non-AFDC and non-IV–E provisions unique to non-AFDC cases. This will eliminate "double jeopardy" as described by the commenter. In addition, this is consistent with the movement of the audit to a more results-oriented process.

iii. Credit for providing services.

1. *Comment:* One commenter recommended that audit standards consider allowing either an exception to or a tolling of the timeframes in cases in which interim timeframes have been met but delays in achieving result were beyond the control of the IV–D agency.

Response: States must provide necessary services within required timeframes in 75 percent of the cases evaluated under each audit criterion. The 75 percent substantial compliance test allows a 25 percent margin for error into which such cases could fall and not result in the State being penalized for inadvertent delay.

2. *Comment:* One commenter noted that credit is not available when the State fails to meet the administrative criteria and the following service-related criteria: Collection and distribution of support payments; services to individuals not receiving AFDC or title IV–E foster care assistance; provisions of services in interstate cases; and medical support.

Response: We believe that, for audit purposes, a State should not be penalized when timeframes are missed in a case if a successful result is achieved (a support order is established or adjusted, or a collection is made), since these results are the main goals of

the child support enforcement program. We further believe that this position is responsive to the widely-shared goal of a more results-oriented approach to OCSE auditing and States' concern that missing an interim timeframe, when a successful result is achieved in a case, may create a disincentive to continue working the case. In addition, as discussed previously, the provision of services in interstate IV–D cases and services to non-AFDC, non-IV–E individuals is now evaluated under other service-related criteria. Therefore, if the State misses an interstate timeframe, but the appropriate service(s) included under § 305.20(a)(4) is provided during the audit period, the State will be considered to have taken appropriate action for audit purposes. However, credit is not extended to all requirements since to do so would render meaningless timeframes established to ensure effective and efficient delivery of services. Furthermore, as previously explained, administrative criteria, such as Statewide operations, reports and maintenance of records, and separation of cash handling and accounting functions, are evaluated from an overall process standpoint rather than a case analysis approach.

3. *Comment:* One commenter indicated support for the concept for providing credit even though timeframes are missed; however, the commenter urged that credit be given for actions *attempted* in the audit period although not successfully completed, provided that there is a reasonable expectation that the action will eventually be successful.

Response: We disagree with such an approach. It would be highly subjective to predict or speculate about future success, in contrast to determining that the successful result has in fact been achieved. Achieving national consistency in applying such an auditing approach would also be a formidable, if not impossible, task. Therefore, the allowance of credit (i.e., action for audit purposes), for providing services despite a State's failure to accomplish the function within the designated timeframes is limited to case(s) in which successful results occur within the audit period. While we are striving to develop a more results-oriented approach to evaluating States' performance, we believe that following the commenter's suggestion would undermine the integrity and objectivity of the audit process.

4. *Comment:* One commenter emphasized that it is essential that audit criteria not only consider actions taken, but that such actions actually be successful or closely related to a successful conclusion of the case. Another commenter recommended that OCSE specify that a State will receive credit, without penalty, for achieving a desired result even if the State did not meet every location requirement.

Response: Currently, States are evaluated on whether they have taken the appropriate action or actions needed in a case. The particular action or actions that are warranted have been defined in Federal and State laws, policies and operational procedures independent of the audit process. The inclusion of program standards requirements within the audit criteria will further ensure that States follow these established policies and procedures, which are intended to facilitate achievement of a successful outcome. Furthermore, in order to receive any credit for actions when intermediate timeframes are missed, a State must actually achieve success within the audit period.

5. *Comment:* One commenter recommended that a State be given credit for audit purposes even if the timeframes are not met if a child support order has been reviewed and a determination has been made within the audit period that no adjustment is appropriate. The commenter cited an example of a situation in which the review was conducted but as a result a determination was made that the order was presently in-line with guidelines and thus an adjustment not warranted. The commenter objected to the proposal to grant credit when timeframes are missed only if an adjustment was obtained.

Response: We agree with the commenter that, for audit purposes, the State should be given credit when the timeframes are not met, but the State has reviewed the child support order and determined that no adjustment is needed, during the audit period. Therefore, the final regulation at § 305.20(a)(4)(ii) provides that notwithstanding timeframes for establishment of cases, provision of services in interstate IV-D cases, location, and review and adjustment of support orders contained in §§ 303.2(b), 303.7 (a), (b), (c) (4) through (6), (8), and (9), 303.3(b) (3) and (5), and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State law and procedures and § 303.8, and the order is adjusted, or a determination is made, as the result of a review, that an adjustment is not needed, during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

6. *Comment:* Numerous commenters expressed concern that, for purposes of receiving credit for enforcement when timeframes are not met, the State must have made a collection during the audit period. One commenter recommended that States be given credit for the attempt to use at least one other enforcement technique. Several commenters recommended that OCSE revise the proposed regulations to clarify that States will be given credit, without penalty, for taking or attempting a range of enforcement actions, even if no collection results. One commenter indicated that under the proposed criteria, cases with poor chances of success would be given priority, because the only way a State would be given credit for working these cases would be to do so within the timeframes. Another commenter argued that limiting credit when enforcement timeframes are missed to only those situations in which a collection is realized within the audit period, creates a timing issue if the legal action was initiated late in the audit period and the collection it generated was received after the audit period. One commenter asserted that it is counter-productive to require States to take an enforcement action, only to penalize the State when no collection is obtained during the audit period. Another commenter contended that legitimate attempts at enforcement will not receive credit, and recommended that audit compliance recognize a "State's intent," even when it is unsuccessful.

Response: States are required to provide child support services in accordance with Federal requirements, including standards for program operations timeframes. Under these requirements, the State must provide all required services so that children receive the support they need and deserve. The State should provide the necessary services in a timely manner rather than trying to anticipate what needs to be done to pass the audit. Under the new rule, granting the State credit when timeframes are missed should be the exception and not the norm. As long as all appropriate actions were taken within the allotted timeframes, States will receive credit for working the case even though no collection results from an enforcement action, or when the collection is received after the close of the audit period. A State receives credit for enforcement in situations in which the enforcement action was not completed in a timely manner only if a collection is received within the audit period.

In an effort to focus more closely on measuring States' performance based on results achieved, we have developed a mechanism whereby missing the timeframe will not create a disincentive to following-through with necessary action. Therefore, credit will be given to a State which achieves a successful result in a case in which the action was taken outside the required timeframe. Regarding enforcement actions accomplished outside the timeframes, we maintain that the only reasonable and objective measurement of a State's accomplishment which warrants the exception is the receipt of a collection within the audit period.

7. *Comment:* Another commenter requested guidance concerning how collections can be linked to enforcement techniques where it is not possible to document the linkages.

Response: A collection in a case in which enforcement action was taken, although not within the timeframes, will be a basis for credit regardless of whether that collection was a direct result of the specific remedy used.

8. *Comment:* Several commenters suggested that credit be allowed for enforcement purposes if the State actually collects a significant proportion (80 to 90 percent) of the required current support due in a case during the audit period.

Response: We believe that such an approach is unnecessary because we do not require that all current support due be collected before a State receives credit for enforcement. As long as some amount is collected as a result of enforcement action within the audit period, credit will be allowed regardless of whether timeframes are met or the full amount due is collected.

9. *Comment:* One commenter sought assurance that use of contempt proceedings would be an acceptable enforcement technique in addition to Federal and State income tax refund offset where wage withholding is not available or appropriate.

Response: While contempt proceedings are not necessarily the best approach, we recognize that in some States this remedy may be the only option under certain circumstances. Therefore, the use of contempt or any other enforcement action available under State law would suffice to meet the substantial compliance requirement for enforcement when wage withholding is not available or appropriate.

10. *Comment:* One commenter requested clarification that States may continue to decide appropriate enforcement techniques in individual cases by using guidelines developed by the State for determining when use of a particular remedy would not be appropriate.

Response: The commenter is correct in that States will be evaluated in their use of enforcement remedies which require consideration of State guidelines for determining when use of a particular procedure (e.g., imposition of liens on real and personal property) is inappropriate in a case.

11. *Comment:* One commenter questioned an example used in the preamble to the proposed rule concerning the required use of alternate enforcement techniques when wage withholding is not available or appropriate. They asked whether an alternate remedy had to be used only in situations in which neither the employer nor the non-custodial parent could be located, or if the requirement applied even if one of the two (employer or the non-custodial parent) had been located.

Response: In cases in which wage withholding cannot be implemented or is not available and the noncustodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b). Under this provision, the State must use an alternative remedy when the noncustodial parent has been located and wage withholding cannot be implemented (e.g., the parent has no identified wages or the employer is unknown) or is not available (e.g., the parent is self-employed).

12. *Comment:* One commenter questioned how a case would be evaluated when action was taken but not within timeframes and a successful result did not occur within the audit period. The commenter requested clarification of whether the case would be excluded from the audit or considered an error. They noted that when working a case, a State does not know the end result until the action is concluded.

Response: If an action is taken outside of the prescribed timeframes and a successful result is not achieved during the audit period, it would be considered an error. Such cases would not be excluded from the evaluation. If a State adheres to the timeframes in taking the appropriate action in a case, the State will be credited with having taken an appropriate action. Credit for actions when timeframes are missed will only be extended where a successful result is achieved within the audit period.

c. *Expedited processes.*

1. *Comment:* One commenter requested further explanation of the mechanism for evaluating the State's compliance with expedited processes. Another commenter recommended that audit criteria for expedited processes be expanded to include legitimate continued court hearings for obligors as acceptable outcomes. The commenter contended that this approach would limit the temptation to simply request the court to enter a finding of contempt so the case can be dropped until the next audit period.

Response: Prior to the issuance of this regulation, the expedited processes requirements at § 303.101(b)(2) required the State to meet a 100 percent standard in one year. The corresponding audit regulation at § 305.50 used the same standard in determining whether the State was in substantial compliance with Federal requirements. Under this regulation at § 303.101(b)(2)(i), the State must, for cases needing support order establishment regardless of whether paternity has been established, establish a support order from the date of service of process to the time of disposition as follows: (1) 75 percent in 6 months; and (2) 90 percent in 12 months. However, when the IV–D agency uses long-arm jurisdiction, and disposition takes place within 12 months of locating the alleged father or noncustodial parent, the case may be counted as a success within the 6-month tier of the timeframe under § 303.101(b)(2)(i) regardless of when disposition occurs. Under the new corresponding audit regulation at § 305.20(a)(5), we will evaluate State compliance with expedited processes using the revised standards in §§ 303.101(b)(2) (i) and (iii).

With respect to the enforcement actions such as contempt proceedings, § 303.101(b)(2)(ii) would apply. It references timeframes under § 303.6(c)(2). Because State adherence to § 303.6(c)(2) timeframes will be evaluated under a 75 percent standard, the occurrence of continuances in certain situations which delay case processing beyond the timeframes could be condoned. However, "taking" an enforcement action under § 303.6(c)(2) requires that the IV–D agency commence and complete appropriate enforcement action within the timeframe. Therefore, a continuance is not an acceptable outcome for purposes of meeting the expedited processes timeframes.

Paternity Establishment Percentage Standard—Proposed § 305.97

1. *Comment:* Several commenters pointed out that regulations should reflect the standard contained in OBRA

'93, not the Family Support Act standard. Two commenters identified technical problems with the standard contained in OBRA '93, and suggested that OCSE wait until the statute is amended before issuing final regulations. One commenter suggested that the new standard, as revised by OBRA '93, should be developed into a proposed rule and disseminated for comment before final regulations are issued.

Response: The commenter is correct. The proposed rule contained the Family Support Act standard rather than the OBRA '93 standard. Not only was the standard revised by OBRA '93, but it was more recently changed by Pub. L. 103–432, a law signed by the President on October 31, 1994. Because of these recent changes, we have not addressed in this regulation the paternity establishment standard or audit criteria for evaluating the standard.

2. *Comment:* In the proposed rule (58 FR at 47423), we solicited comments regarding an option that would have allowed States meeting the paternity establishment percentage standard to be exempt from other paternity establishment audit criteria, including timeframes. Most commenters supported this results-oriented proposal. If this approach were taken, most commenters did not think it would be necessary to incorporate a timeliness measure in the paternity establishment percentage. One commenter suggested that the proposed approach be extended to all audit criteria. Another commenter suggested reversing the proposed approach by waiving the paternity establishment percentage standard when a State meets other paternity establishment audit criteria.

Response: We appreciate commenters' views on this issue. However, we do not believe this is the time to make such a change. As we stated in the proposed rule, data reported incident to the paternity establishment percentage standard need to be tested and validated before we can consider exempting States that meet the paternity establishment percentage standard from meeting other paternity establishment audit criteria. Since Congress has recently changed the paternity establishment percentage standard, we will need to test and validate the appropriate data.

As we stated in the notice of proposed rulemaking, we are also concerned that timeliness of paternity case processing is addressed by other audit criteria, but not by the paternity establishment percentage standard. No commenter suggested a way of incorporating a timeliness measure in the paternity establishment percentage standard.

It is premature to extend the proposed approach to all other audit criteria, as one commenter suggested. Performance standards, similar to the paternity establishment percentage, have not been developed for other audit criteria. Finally, the proposed approach cannot be reversed—i.e., the paternity establishment percentage standard cannot be waived if a State meets other paternity establishment audit criteria. Federal law requires States to meet the paternity establishment percentage standard in order to be determined to be in substantial compliance with the Act.

In addition, under the President's Welfare Reform bill, audits conducted by OCSE would not include the evaluation of State programs to determine State compliance with specific Federal requirements. Under the bill, States would conduct reviews to determine whether IV–D services are provided in accordance with program requirements. OCSE audits would focus on determining the reliability of State data including data use in the paternity establishment percentage standard reported to the Federal Government. The evaluation of State paternity activities, including the paternity standard, would no longer be included under an OCSE audit.

Performance Indicators—§ 305.98

1. *Comment:* One commenter expressed concern that the proposed changes to § 305.98 concerning the description and periodic update of the scoring system would permit OCSE to change the criteria in the future simply by issuing program instructions. The commenter suggested that any changes to the performance indicators criteria should be accomplished through the rulemaking process, not through issuance of instructions. Another commenter requested that the performance indicator ratio which requires comparison of the total amount of assistance furnished in AFDC IV–D cases to the total amount of AFDC collections in such cases should be rescinded, claiming that very few cases are affected by this. Alternatively, the commenter urged that if the criterion is retained, the related automation requirement should be delayed until the effective date of the computerized support enforcement system requirements in October 1995.

Response: The changes made to § 305.98 are limited to replacing the previous two-year frequency for updating the scoring system with updating, through the rulemaking process, whenever OCSE determines that it is necessary and appropriate. We believe the performance indicator which measures reimbursement of AFDC assistance payments which has been used since FY 1986 continues to be an effective measure of State performance. States are currently required to maintain data necessary to use this performance indicator.

Notice and Corrective Action Period—§ 305.99

1. *Comment:* One commenter expressed concern about the treatment of compliance rates between 75 percent and 80 percent "as marginal". They contended that because if a State is only marginally complying with a particular criteria, and the State fails to address the situation through corrective action, such that a penalty may be imposed, in essence means that the minimum compliance rate is actually 80 percent.

Response: As explained in the response to comments in the preamble to the 1985 final rule governing the audit process (50 FR at 40136), marginal substantial compliance refers to the treatment—in the written notice to a State found not to be in substantial compliance with one or more title IV–D requirements—of those functional State plan-related audit criteria which the State met in only 75 to 80 percent of the cases reviewed.

The commenter's contention is inaccurate. A determination that a State is in marginal compliance is not an indication of a deficiency upon which a penalty may be based unless the State fails to maintain a level of substantial compliance with respect to any marginally-met criteria cited in the penalty notice. A finding of marginal substantial compliance serves to alert a State to particular areas for which the State's performance is bordering upon failure. It signals a need for improvement.

As we indicated in response to similar comments in the final rule promulgated in 1985 (50 FR at 40131), although the audit criteria the State marginally met cannot result in a finding of noncompliance or application of the penalty at the time of the notice, the State must, during the corrective action period, maintain substantial compliance in the areas cited in the notice as marginally acceptable to avoid subsequently losing funds under the penalty. Federal regulations require that the notice issued to the State concerning the audit findings must indicate the functional audit criteria that the State met only marginally.

States for which a finding of a marginal substantial compliance is made with respect to one or more criteria during an audit are encouraged, but are not required, to address the

concerns as part of their corrective action plan. Any criteria for which the State has been found to be in marginal substantial compliance are reexamined in conjunction with the follow-up review following the corrective action period to ensure that the State has maintained a level of substantial compliance (e.g., at least 75 percent). A State will not be penalized if, as part of a follow-up review, the areas identified in the previous audit as being in "marginal" substantial compliance remained marginal. However, if the follow-up review findings reflect that a criterion in marginal compliance slipped below 75 percent, a penalty could be imposed. We encourage States to improve their performance in all areas addressed in the notice.

Miscellaneous

1. *Comment:* Three commenters contended that the proposed effective date for the audit rule changes is too lenient since States have had ample opportunity to meet mandatory requirements under the Family Support Act of 1988. They argued that States should be judged before publication of the final audit regulation because they have had more than enough time to prepare for audits.

Response: Prior to the issuance of this final rule, OCSE had authority under 45 CFR Part 305 to evaluate State compliance with some of the requirements of the Family Support Act of 1988, including wage withholding, $50 pass-through payment, and the establishment of paternity until age 18. However, since we did not have the authority to evaluate all Family Support Act requirements for purposes of substantial compliance, the audit covered the provisions of the Family Support Act in a general manner to determine whether the States had implemented these requirements. Deficiencies identified were reported to the appropriate State officials as management findings. In addition, our regional offices conducted program reviews of State implementation of selected Family Support Act provisions, shared their findings with State agencies, and assisted in developing action steps to remedy any deficiencies identified. Under this final rule, we have included audit criteria that will now enable us to evaluate State compliance with all requirements of the Family Support Act. State failure to prospectively achieve substantial compliance with these requirements could result in imposition of the statutory audit penalty.

2. *Comment:* One commenter recommended that audit criteria be expanded to include evaluations of State staffing standards designed to ensure that States are adequately complying with Federal regulations governing minimum organizational and staffing requirements. Another commenter requested that OCSE mandate caseload per worker ratios.

Response: In response to comments in the preamble to the final rule governing Standards for Program Operations (54 FR 32306), we responded to similar concerns on staffing standards and resource allocation. We expressed our belief that States and localities should establish specific resource or staffing standards. We clarified that the Federal regulatory requirement has never been quantified as a national standard. We explained that while we believe that it is highly beneficial for IV–D programs to establish such standards, OCSE has not established universal standards because of the various factors unique to each State's or locality's operations. OCSE will continue to provide technical assistance and disseminate relevant information pertaining to resource or staffing standards.

Because the issue of staffing standards has been articulated as a critical, and growing, concern for IV–D agencies, OCSE has issued a program improvement grant to develop a methodology for establishing staffing standards. Under the project awarded to the State of Virginia, the State operations contractor will streamline current operations through an operational analysis. The contractor will also develop a staffing standards methodology which will be applied to the streamlined operations. The project period is October 1993 to September 1996. Relevant information will be shared with other States on an ongoing basis. Furthermore, the President's Welfare Reform bill would require the Secretary to study and report to Congress on the staffing of each State's child support enforcement program.

3. *Comment:* One commenter expressed concern about the efficacy of Federal audits, noting that there is considerable disparity between State internal audit results and Federal audit findings.

Response: The variances between a State's internal audit and OCSE audit findings in the situation described by the commenter is attributable to the fact that the State audit is using its own State-developed methodology and criteria in evaluating the child support program during a given period of time. The timeframe, requirements assessed, and the methodology employed may all be different than that of a Federal audit. Audits conducted by OCSE use the methodology described in the audit guide, which is available to States, and the criteria set forth in the audit regulations in 45 CFR part 305 in evaluating a State's IV–D program. In addition, OCSE audits build upon the results of audits conducted by States under the Single Audit Act which avoid duplicative audit activity.

4. *Comment:* Some commenters contended that changes to the audit requirements during the time States are engaged in major efforts to automate their programs is disruptive to those efforts. One commenter advocated that implementation deadlines for the new rules should be delayed. The commenter stated that the penalty should be replaced with something more reasonable. Another commenter urged that the audit guide should be released at the same time as Federal regulations are published, and that it should describe the process and parts to be emphasized, so that States can implement their programs in the appropriate way and avoid costly revisions to their systems.

Response: States are required to meet all Federal requirements set forth in law and regulations governing the IV–D program as a condition of having an approved State plan and continued eligibility for Federal financial participation in their programs. Audits of State performance are mandated by Federal law as a primary means to ensure that States, in fact, carry out these responsibilities. The OCSE audit guides are designed, developed, and disseminated to assist States. However, Federal law and regulations, not audit guides, are the bases upon which child support program audits are conducted, penalties imposed, and States held accountable.

In enacting the explicit effective dates for various requirements under the Family Support Act of 1988, Congress did not intend for States to delay action to conform their laws and procedures to the requirements until such time as they had established a computerized support enforcement system. States have known about the Family Support Act requirements for more than five years, and have had 90 percent Federal funding for developing systems available for 13 years. Congress did not intend that States should be held harmless for their program deficiencies during the development of their automated systems. Furthermore, the audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State Plan approval process, the audit resolution and

tracking system, as well as the established audit process, to review State compliance.

5. *Comment:* One commenter submitted that audit samples should include paying cases, arguing that without such cases, States are only measured on their failures to monitor cases. They contended that audit findings may be skewed if such cases are eliminated from consideration in evaluating the State's performance.

Response: Audit samples selected during the audit include all types of IV–D cases, including paying cases. In evaluating a State's performance through the audit process, cases that need enforcement or other action, including cases in paying status during the audit period, are examined to determine whether such action was taken appropriately in accordance with Federal and State program requirements, including relevant timeframes. If a State has taken the necessary action required by the particular case circumstances, credit will be given. Cases in paying status that did not require any action during the audit period will be examined as to whether collection and distribution requirements were met.

6. *Comment:* One commenter contended that the proposal continues to stress process over product and imposes a single set of inflexible standards with arbitrary passing scores upon the 54 diverse State programs. The commenter urged that the OCSE and the IV–D system would be better served by moving toward a system of negotiated rulemaking nationally and a performance-based audit approach tailored to State programs.

Response: In the national performance review as well as in Presidential Executive Order No. 12866, Federal agencies are strongly encouraged to utilize negotiated rulemaking. The Department is fully committed to this, as well as to our ongoing efforts to design a mechanism to evaluate States based on the results of their efforts. In addition, under the President's Welfare Reform bill, audits conducted by OCSE would not include the evaluation of State programs to determine State compliance with Federal requirements. Under the proposal, the State will conduct reviews to determine whether IV–D services were provided in accordance with program requirements. OCSE audits would focus on determining the reliability of State data reported to the Federal Government.

7. *Comment:* In response to OCSE's certification in the proposed rule concerning regulatory flexibility analysis, one commenter suggested that the proposed regulations impact a substantial number of small entities inasmuch as most States rely on cooperative agreements with political subdivisions to attain program compliance objectives.

Response: This regulation is applicable to Federal audits of State government programs. State governments, upon which these regulations will primarily impact, are not considered small entities under the Regulatory Flexibility Act.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act. Also, while OBRA '93 requires States to pass laws that may impact hospitals, these regulations do not govern hospitals per se and therefore do not have a significant impact on a substantial number of small entities.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

List of Subjects in 45 CFR Parts 301, 302, 303, 304, and 305

Accounting, Child support, Grant programs—social programs, and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program)

Dated: July 14, 1994

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: September 7, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, title 45 chapter III of the Code of Federal Regulations is amended as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for Part 301 continues to read as set forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by adding in alphabetical order the definitions of "Birthing hospital" and "Procedures":

§ 301.1 General definitions.

* * * * *

Birthing hospital means a hospital that has an obstetric care unit or provides obstetric services, or a birthing center associated with a hospital. A birthing center is a facility outside a hospital that provides maternity services.

* * * * *

Procedures means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV–D plan. The IV–D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

* * * * *

PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Section 302.70 is amended by revising paragraphs (a), introductory text, and (a)(2), and by adding new paragraphs (a)(5)(iii) through (a)(5)(viii) and (a)(11) to read as follows:

§ 302.70 Required State laws.

(a) *Required Laws.* The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

* * * * *

(2) Expedited processes to establish paternity and to establish and enforce child support orders having the same force and effect as those established through full judicial process, in accordance with the requirements set forth in § 303.101 of this chapter;

* * * * *

(5) * * *

(iii) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging

paternity are explained, and ensure that due process safeguards are afforded. Such procedures must include:

(A) A hospital-based program in accordance with § 303.5(g) for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child to an unmarried mother, and a requirement that all public and private birthing hospitals participate in the hospital-based program defined in § 303.5(g)(2); and

(B) A process for voluntarily acknowledging paternity outside of hospitals.

(iv) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity;

(v) Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(vi) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child;

(vii) Procedures under which a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity; and

(viii) Procedures requiring a default order to be entered in a paternity case upon a showing that process was served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law.

* * * * *

(11) Procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

5. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

6. Section 303.4 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

§ 303.4 Establishment of support obligations.

* * * * *

(d) Within 90 calendar days of locating the alleged father or noncustodial parent, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

* * * * *

(f) Seek a support order based on a voluntary acknowledgment in accordance with § 302.70(a)(5)(vii).

* * * * *

7. Section 303.5 is amended by revising paragraph (a) and by adding paragraphs (f), (g), and (h) to read as follows:

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter in which paternity has not been established, the IV–D agency must, as appropriate:

(1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 302.70(a)(5)(iii); and

(2) Attempt to establish paternity by legal process established under State law.

* * * * *

(f) The IV–D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

(g) *Hospital-based program.*

(1) The State must establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital. These programs must be operational in birthing hospitals statewide no later than January 1, 1995 (unless Federal law governing the effective date gives the State additional time).

(2) During the period immediately before or after the birth of a child to an unmarried woman in the hospital, a hospital-based program must, at a minimum:

(i) Provide to both the mother and alleged father, if he is present in the hospital:

(A) Written materials about paternity establishment,

(B) the forms necessary to voluntarily acknowledge paternity,

(C) a written description of the rights and responsibilities of acknowledging paternity, and

(D) the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;

(iii) Afford due process safeguards; and

(iv) Forward completed acknowledgments or copies to the entity designated under § 303.5(g)(8).

(3) A hospital-based program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must require that a voluntary acknowledgment obtained through a hospital-based program be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

(5) The State must provide to all public and private birthing hospitals in the State:

(i) written materials about paternity establishment,

(ii) forms necessary to voluntarily acknowledge paternity, and

(iii) copies of a written description of the rights and responsibilities of acknowledging paternity.

(6) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the hospital-based program.

(7) The State must assess each birthing hospital's program on at least an annual basis.

(8) The State must designate an entity to which hospital-based programs must forward completed voluntary acknowledgments or copies in accordance with § 303.5(g)(2)(iv). Under State procedures, this entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV–D agency must have timely access to whatever

identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f).

(h) In IV–D cases needing paternity establishment, the IV–D agency must determine if identifying information about a voluntary acknowledgment has been recorded in the statewide database in accordance with § 303.5(g)(8).

8. Section 303.101 is amended by revising paragraphs (a), (b), (c)(1) and (3), (d) (2) through (4), and (e), and by adding paragraph (d)(5) to read as follows:

§ 303.101 Expedited processes.

(a) *Definition. Expedited processes* means administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in paragraph (b)(2) of this section.

(b) *Basic requirement.* (1) The State must have in effect and use, in interstate and intrastate cases, expedited processes as specified under this section to establish paternity and to establish and enforce support orders.

(2) Under expedited processes:

(i) In IV–D cases needing support order establishment, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

(ii) In IV–D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§ 303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at § 303.101(b)(2)(i), in cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6 month tier of the timeframe, regardless of when disposition occurs in the 12 month period following service of process.

(iv) Disposition, as used in paragraphs (b)(2)(i) and (iii) of this section, means the date on which a support order is officially established and/or recorded or the action is dismissed.

(c) * * *

(1) Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

* * * * *

(3) The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order;

* * * * *

(d) * * *

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

* * * * *

(e) *Exemption for political subdivisions.* A State may request an exemption from any of the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d) of this chapter.

PART 304—FEDERAL FINANCIAL PARTICIPATION

9. The authority citation for Part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

10. Section 304.20 is amended by adding paragraphs (b)(2)(vi) through (viii) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) * * *

(2) The establishment of paternity including:

* * * * *

(vi) Payments up to $20 to birthing hospitals and other entities that provide prenatal or birthing services for each voluntary acknowledgment obtained pursuant to an agreement with the IV–D agency;

(vii) Developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

(viii) Reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program as defined by § 303.5(g)(2).

* * * * *

11. Section 304.23 is amended by revising paragraph (d) to read:

§ 304.23 Expenditures for which Federal financial participation is not available.

* * * * *

(d) Education and training programs and educational services except direct cost of short term training provided to IV–D agency staff or pursuant to §§ 304.20(b)(2)(viii) and 304.21.

PART 305—AUDIT AND PENALTY

* * * * *

12. The authority citation for Part 305 is revised to read as set forth below:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1), (4) and (g), and 1302.

13. Section 305.0 is revised to read as follows:

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV–D and for a possible reduction in Federal reimbursement for a State's title IV–A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit. Section 305.98 sets forth the performance indicators the Office will use to determine State IV–D program effectiveness.

Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV–D program. Section 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and to have failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

14. Section 305.1 is revised to read as follows:

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part.

15. Section 305.10 is amended by revising the last sentence of paragraph (a) and paragraph (c)(2) to read as follows:

§ 305.10 Timing and scope of audit.

(a) * * * The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20 and 305.98 of this part.

* * * * *

(c) * * *

(2) Use the audit standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

* * * * *

16. Section 305.12 is amended by revising paragraph (a) to read as follows:

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV–D agency. At that conference, the Office will explain how the audit will be performed and make any necessary arrangements.

* * * * *

17. Section 305.20 is revised to read as follows:

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act:

(a) For any audit period which begins on or after December 23, 1994, a State must meet the IV–D State plan requirements contained in Part 302 of this chapter measured as follows:

(1) The State must meet the requirements under the following criteria:

(i) Statewide operations, § 302.10;

(ii) Reports and maintenance of records, § 302.15(a);

(iii) Separation of cash handling and accounting functions, § 302.20; and

(iv) Notice of collection of assigned support, § 302.54.

(2) The State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

(i) Establishment of cases, § 303.2(a); and

(ii) Case closure criteria, § 303.11.

(3) The State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

(i) Collection and distribution of support payments, including: Collection and distribution of support payments by the IV–D agency under §§ 302.32(b) and (f); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(ii) Establishment of paternity and support orders, including: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under §§ 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under §§ 303.4(d), (e) and (f);

(iii) Enforcement of support obligations, including, in all appropriate cases: Establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(iv) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(v) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving AFDC or title IV–E foster care assistance, under §§ 302.33(a)(1) through (4); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

(4) With respect to the 75 percent standard in § 305.20(a)(3):

(i) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(4) through (6), (8) and (9); location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d), if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(ii) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7(a), (b) and (c)(4) through (6), (8) and (9); and location and review and adjustment of support orders contained in §§ 303.3(b)(3) and (5), and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted, or a determination is made, as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iii) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b) and (c) (4) through (6), (8) and (9); and location and wage withholding in §§ 303.3(b) (3) and (5), and 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(iv) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under §§ 303.7 (a), (b) and (c) (4) through (6), (8) and (9); and location and enforcement of support obligations in §§ 303.3(b) (3) and (5), and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken

appropriate action in the case for audit purposes.

(5) The State must meet the requirements for expedited processes under §§ 303.101(b)(2) (i) and (iii), and (e).

(6) The State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in § 305.98(a).

18. Sections 305.21 through 305.57 are removed and reserved.

§§ 305.21–305.57 [Removed and Reserved]

19. Section 305.98 is amended by revising paragraph (c), introductory text, and paragraph (d) to read as follows:

§ 305.98 Performance indicators and audit criteria.

* * * * *

(c) The Office shall use the following procedures and audit criteria to measure State performance.

* * * * *

(d) The scoring system provided in paragraph (c) of this section will be described and updated whenever OCSE determines that it is necessary and appropriate by the Office in regulations.

20. Section 305.99 is amended by revising paragraph (b)(2) to read as follows:

§ 305.99 Notice and corrective action period.

* * * * *

(b) * * *

(2) Identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in § 305.20(a)(3)];

* * * * *

[FR Doc. 94–31313 Filed 12–21–94; 8:45 am]

BILLING CODE 4150–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 80–739 and GEN Docket No. 87–14]

WARC–1979 and Amateur/Land Mobile Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document corrects two final regulations, 49 FR 2357 (January 19, 1984) and 53 FR 36287 (September 19, 1988), and removes an expired footnote. The regulations relate to WARC–1979 allocations and the allocation of spectrum to the amateur and land mobile services.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION:

Need for Correction

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

List of Subjects in 47 CFR Part 2

Frequency allocation, General rules and regulations, Radio.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Accordingly, 47 CFR Part 2 is corrected by making the following correcting amendments:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

§ 2.106 [Corrected]

2. In Columns (4) and (5) of the 220–222 MHz band, remove US243, Land mobile, and the colon after Radiolocation; and add LAND MOBILE.

3. In Column (6) of the 220–222 MHz band, remove Private land mobile (90); and add PRIVATE LAND MOBILE (90).

4. In Columns (4) and (5) of the 222–225 MHz band, remove US243 and the colon after Radiolocation.

5. In Column (5) of 222–225 MHz band, remove amateur; and add AMATEUR.

6. In Column (6) of the 222–225 MHz band, remove Amateur (97); and add AMATEUR (97).

7. In Columns (5) and (6) between 216–220 MHz band and the 220–222 MHz band, add a horizontal line to separate the two bands.

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
			Government	Non-Government		
Region1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Allocation MHz	Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
			220–222 Land Mobile. Radiolocation. 627, G2.	220–222 Land Mobile. 627	Private Land Mobile (90).	
			222–225 Radiolocation. 627, G2.	222–225 Amateur. 627.	Amateur (97)	

* * * * *

8. The text of footnote US243 is removed from the list of United States Footnotes.

9. The text of footnote 471 in the list of International Footnotes is corrected to read as follows:

International Footnotes

* * * * *

471 The bands 490–495 kHz and 505–510 kHz shall be subject to the provisions of No. 3018 until the entry into force of the reduced guardband in accordance with Resolution 210 (Mob–87).

* * * * *

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–31560 Filed 12–22–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 2, 15, and 24

[GEN Docket No. 90–314; FCC 94–304]

Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission addresses eight petitions for reconsideration of the *Third Report and Order* (*Third R&O*) in this proceeding, 59 FR 9419 (February 28, 1994). The Commission affirms the denials of broadband personal communications services (PCS) pioneer's preferences to petitioners, and because of the recent passage of legislation regarding the General Agreement on Tariffs and Trade (GATT) that mooted any further Commission action on the three broadband PCS pioneer's preference grants, dismisses those portions of the petitions that pertain to the grants.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Lynn Remly, Office of Engineering and Technology, at (202) 653–8106.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in GEN Docket 90–314, adopted December 2, 1994 and released December 2, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W. Washington, D.C. 20037.

Summary of MO&O

1. The Commission's pioneer's preference rules provide a means of extending preferential treatment in its licensing process to parties that demonstrate their responsibility for developing new communications services and technologies. These rules are intended to foster development of new services and improve existing services by reducing the delays and risks innovators otherwise would face with the Commission's licensing process.

2. To be granted a pioneer's preference, therefore, an applicant must demonstrate that it has developed a new service or technology; that is, that it has developed the capabilities or possibilities of the service or technology or has brought the service or technology to a more advanced or effective state. The applicant also must demonstrate the technical feasibility of the new service or technology, either by submitting a technical feasibility showing or having submitted at least preliminary results of an experiment. Finally, a preference will be granted only if the rules adopted are a reasonable outgrowth of the proposal and lend themselves to grant of a preference.

3. In this proceeding, the Commission received pioneer's preference requests related to broadband PCS from 89 applicants, of which 50 were accepted for consideration. In October 1992, it tentatively found that American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint) merited preferences and that the remaining 47 requests relating to broadband PCS tentatively did not merit preferences. In December 1993, in the *Third R&O*, the Commission concluded that APC, Cox, and Omnipoint (Grantees) met the pioneer's preference standard and therefore merited award of preferences, and that the remaining requests did not meet this standard and therefore did not merit award of preferences. APC was granted a preference for having developed and demonstrated technologies that facilitate spectrum sharing by mobile PCS and fixed microwave systems at 2 GHz; Cox was granted a preference for having developed and demonstrated the feasibility of innovatively using cable television facilities as part of the PCS infrastructure; and Ominipoint was granted a preference for having designed and manufactured a 2 GHz spread spectrum handset and associated base station equipment.

4. In its petition for reconsideration, Advanced Cordless Technologies, Inc. (ACT) requested that the Commission reconsider the *Third R&O* "insofar as the Commission there * * * failed to award a pioneer's preference to ACT." However, the Commission found that its decision to deny ACT's PCS pioneer's preference request was made in the *First Report & Order* in GEN Docket No. 90–314 and ET Docket No. 92–100, 58 FR 42681 (August 11, 1993), not in the *Third R&O*. Accordingly, it dismissed ACT's petition.

5. In their joint petition for reconsideration, Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc. (AMT/DSST) claimed that the Commission erred in its conclusions regarding the compatibility of their proposed spectrum scheme with the plan adopted in the *Second Report and Order (Second R&O)* in this proceeding, and regarding an AMT/DSST demonstration of the technical feasibility of their broadband PCS equipment. However, the Commission reaffirmed its findings that AMT/DSST's proposal is incompatible with the 2 GHz broadband PCS rules and that AMT/DSST had not demonstrated technical feasibility.

6. In its petition for reconsideration, Ameritech argued that it satisfied all of the requirements for a pioneer's preference award in its preference request and that its request and experimental trial demonstrate a level of innovation equal to or greater than that shown by the three broadband PCS preference recipients. However, the Commission found that Ameritech had not demonstrated overall broadband PCS system innovations.

7. Corporate Technology Partners (CTP) filed a petition for reconsideration with the Commission's Office of the Secretary on April 7, 1994, eight days after the statutory filing deadline in this proceeding. The Commission found that it lacked discretion to accept the petition, and accordingly dismissed CTP's petition.

8. In its petition for reconsideration, Nextel Communications, Inc. (Nextel) argued that it warrants a pioneer's preference for its Digital Mobile technology. However, the Commission found that Nextel developed Digital Mobile technology for implementation of 800 MHz Specialized Mobile Radio services, and that Nextel had failed to demonstrate any aspects of innovative technology that were developed for or that have unique relevance to 2 GHz broadband PCS.

9. In its petition for reconsideration, Personal Communications Network Services of New York, Inc. (PCNS–NY) requested that the Commission correct the *Third R&O* by eliminating a reference to an opposition to its pioneer's preference request. However, the Commission found that the *Third R&O* set forth an accurate history that should not have a deleterious effect on PCNS–NY's reputation.

10. In its petition for reconsideration, Qualcomm Incorporated (Qualcomm) claimed that it satisfied the Commission's pioneer's preference criteria and should be awarded a preference. However, the Commission found that Qualcomm had not made a showing of significant development of innovative broadband PCS technology nor raised on reconsideration any new issue that was not fully addressed in the *Third R&O*.

11. In its petition for reconsideration, Spatial Communications Inc. (SCI) requested that the Commission reconsider its denial of SCI's pioneer's preference request for SCI's work in developing Spatial Division Multiple

Access technology. SCI based its argument for reconsideration solely on the fact that the Commission did not consider an experimental report filed by SCI's parent company, ArrayComm, Inc. (ArrayComm). However, the Commission found that the report was not filed in the name of the real party in interest, was filed over a year later than SCI's original request, and was not appropriately referenced.

Ordering Clause

12. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by Advanced Cordless Technologies, Inc. and Corporate Technology Partners ARE DISMISSED; and that the petitions for reconsideration filed by Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc.; Ameritech; Nextel Communications, Inc.; Personal Communications Network Services of New York, Inc.; Qualcomm Incorporated; and Spatial Communications Inc. ARE DENIED IN PART and DISMISSED IN PART.

List of Subjects

47 CFR Part 2

Frequency allocation and radio treaty matters, General rules and regulations, Radio.

47 CFR Part 15

Communications equipment, Radio, Radio frequency devices.

47 CFR Part 24

Personal communications services.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–31559 Filed 12–22–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–265; FCC 94–287]

Cable Television Act of 1992—Program Distribution and Carriage Agreements

AGENCY: Federal Communications Commission.

ACTION: Final Rule; petitions for reconsideration.

SUMMARY: In this Memorandum Opinion and Order (MO&O) the Commission addresses nine (9) petitions for reconsideration of the rules adopted in the First Report and Order in MM Docket 92–265 (First R&O), implementing section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). Specifically, we amend, affirm or clarify certain aspects of the implementing rules in order to ensure that competitors to cable distributors have fair and non-discriminatory access to video programming.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz or Maura Cantrill, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order adopted November 10, 1994, and released December 9, 1994. A synopsis of the First Report and Order (First R&O) that was reconsidered in the MO&O may be found at 58 FR 27658 (May 11, 1993). This action will not add or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. By this action, the Commission amends, clarifies or affirms certain aspects of its rule implementing the program access provisions on the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act).[1] This action is taken in response to nine (9) petitions for reconsideration of the rules adopted in the First Report and Order in MM Docket 92–265 (First R&O), 8 FCC Rcd 3359 (1993); 58 FR 27658 (May 11, 1993). This MO&O, disposes of all but one[2] of the petitions for reconsideration.

2. The 1992 Cable Act amended the Communications Act of 1934, in part, by adding among other things, new section 628. Section 628 is intended to foster the development of competition to traditional cable systems by governing the access by competing multichannel video programming distributors (MVPDs) to cable programming services. Section 628(b) prohibits "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent" competing distributors from providing programming to their customers. Section 628(c) instructs the Commission to adopt regulations to specify particular conduct that is prohibited by subsection (b). Pursuant to that mandate, on April 1, 1993 the Commission adopted its First Report and Order, which set forth the Commission's program access rules and procedures to implement these statutory provisions.

II. Damages

3. Section 628(e) grants the Commission the authority, upon completion of the adjudication of a program access complaint, "to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming." 47 U.S.C. 548(e). In the First R&O, we stated that we did not believe that the 1992 Cable Act provided us with the authority to assess damages against a cable operator or programming vendor. Petitioners claim that the statute provides the Commission with broad authority to order appropriate remedies and that damages are appropriate remedies. Petitioners also argue that damages are a necessary incentive to comply with the program access provisions. In response to the petitions, we have reexamined the statute and the legislative history and we now conclude that section 628(e) provides the Commission with broad authority to order appropriate remedies, including damages. While we have determined that the statute's grant of power to the Commission to award appropriate remedies is broad enough to include damages, we are not persuaded that creating such a remedy for violations of the program access rules is necessary at this time. We believe that the sanctions available to the Commission, together with the program access complaint process are sufficient to deter entities from violating the program access rules. If, contrary to our expectations, it is brought to our attention that our current processes are not working, we will consider revisiting this issue.

III. Attribution Issues

4. The program access provisions in the 1992 Cable Act apply to cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors. 47 U.S.C. 548(b), (c)(2). In assessing vertical integration, the Commission stated in the First R&O that a cable

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[1] Pub. L. No. 102–385, 106 Stat. 1460 section 19 (1992), amending Communications Act of 1934, section 208.

[2] The National Rural Telecommunications Cooperative's (NRTC) petition for reconsideration of the Commission's rule implementing section 628(c)(2)(C) of the Communications Act will be addressed in a separate MO&O.

operator would have an attributable interest in a programming vendor if the cable operator holds five percent or more of the stock of the programming vendor, whether voting or non-voting. In the interest of clarity and certainty, the Commission declined to adopt a behavioral test for assessing attributable interests. The Commission also declined to adopt an exemption based on a programming vendor's *de minimis* vertical interests, noting that the data in the record was insufficient to support a point at which a programming vendor's vertical interests no longer provide the incentives to favor their affiliated cable operators. First R&O, 8 FCC Rcd at 3371 n. 19.

5. Petitioners support their renewed request for a *de minimis* exemption to the attribution standard with an economic study which analyzes the profitability of discriminatory practices in terms of the potential for such discrimination successfully to induce customers to switch to the vertically integrated firm's cable system. The study concludes that there are no economic incentives for anticompetitive behavior by vertically integrated firms with small (under 5%) national subscriber levels. The Commission finds that the analysis in the economic study does not provide a sufficient basis for reversing our previous denial of this exemption. Moreover, in passing the program access provisions of the 1992 Cable Act, Congress was concerned with the ability of competing distributors to obtain access to programming and there is no indication that Congress intended the Commission to carve out various across-the-board exemptions to the program access rules.

6. Petitioners also sought exemptions to the attribution standard for minority-owned cable programming vendors, educational or informational programming, and marketing or technological experiments. The Commission has determined not to adopt a more flexible attribution rule for minority-owned programming vendors or the single majority shareholder provisions of the broadcast attribution standard. Among other reasons, the Commission does not believe that the adoption of such standards will further the goal of encouraging minority ownership or promote the public interest goal of programming diversity. Instead, we believe that it has the potential to affect the consistent application of the vertical integration standard and the program access rules. With respect to educational and informational type programming, the Commission recognizes Congress' intent to promote such programming; however, we do not believe that altering the attribution standard is the most appropriate way of effectuating this policy. Moreover, we believe that altering the standard does not further diversity goals. Finally, the Commission recognizes the necessity for programmers to conduct marketing and technology experiments and demonstrations, however, to adopt the requested exemption to the rules would raise the potential for abuse and circumvention of the rules. In any event, we believe that the program access rules already accommodate the need for experiments and demonstrations, and a general exemption is unnecessary.

7. Petitioners challenge the Commission's determination in the First R&O rejecting the imposition of a showing of vertical integration in the specific market at issue as an element of a claim under section 628(c). We affirm our prior determination, noting that Congress was concerned with industry-wide influences that can occur even in the absence of a vertical relationship in a complainant's specific market.

IV. Competitive Harm or Hindrance to Access

8. Section 628(b) prohibits conduct "the purpose or effect of which is to hinder significantly or to prevent" any MVPD from distributing programming to subscribers or consumers. 47 U.S.C. 548(b). Section 628(c) requires the Commission to adopt regulations proscribing particular specified conduct. In the First R&O, the Commission determined that a complainant alleging a violation of section 628(b) must demonstrate that its ability to distribute programming to its customers has been hampered by the conduct. 8 FCC Rcd at 3374. However, with respect to complaints alleging violations of the rules adopted pursuant to Section 628(c), the Commission determined that the complainant need not demonstrate either specific or generalized harm to competition, rather the harm is implicit in the practices specified in the subsections of 628(c). *Id.* at 3377. In response to petitions to reconsider this determination, we affirm that there is no requirement to show harm in a complaint alleging violations of conduct prohibited by the rules adopted pursuant to Section 628(c).

V. Confidentiality

9. In the First R&O, the Commission established procedures for the adjudication of program access complaints, including a requirement that before filing a complaint the aggrieved MVPD must notify the potential defendant of his intent to file the complaint based on conduct allegedly in violation of the rules and must wait at least ten days after notification before filing the complaint. 47 CFR 76.1003(a). In addition, within its program access rules, the Commission provided confidentiality protection for proprietary information submitted or generated in the course of adjudicating a complaint. 47 CFR 76.1003(h). The Commission's rule allows a party to designate materials as proprietary "if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)." 47 CFR 76.1003(h)(1). The rule also designates persons to whom the proprietary material may be disclosed only for use in the defense or prosecution of the complaint action.[3]

10. In response to petitions regarding the exchange of proprietary information at the pre-complaint notification stage, and the sensitive nature of certain proprietary information, we amend our rules relating to confidential protection of proprietary information. The Commission extends the confidentiality protection for proprietary information contained in §§ 76.1003 (h) and (i) to proprietary information that is exchanged among parties during the pre-complaint negotiation period required under § 76.1003(a). In addition, the Commission believes that there may be situations, due to the competitively sensitive nature of some information, where it is necessary to restrict access to a party's proprietary information to a smaller group of individuals than that provided under the current rules. Therefore, the Commission amends § 76.1003(h)(3) to provide that the Commission will entertain, subject to a proper showing, a party's request to restrict further access to proprietary information as specified by the party The opposing party will have an opportunity to respond to such requests.

[3] 47 CFR 76.1003(h)(2) provides that: Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

VI. Cost Justification

11. Section 628(c)(2)(B) requires the Commission to promulgate regulations that prohibit a vertically integrated satellite cable programming vendor or a satellite broadcast programming vendor from discriminating in the price, terms and conditions in the sale and delivery of satellite cable or satellite broadcast programming. However, under section 628(c)(2)(B)(ii), a vertically integrated satellite cable programming vendor or a satellite broadcast programming vendor may establish different prices "to take into account differences in the cost of creation, sale, delivery, or transmission of * * * programming." 47 U.S.C. 548(c)(2)(B)(ii). In the First R&O, we adopted definitions and guidelines for permitted cost justifications for pricing differentials, including cost differences at the wholesale level among distributors. In connection with pricing based on differences in wholesale costs, we noted that the record supported the *Notice's* preliminary conclusion that delivery of programming to home satellite dish distributors may have a higher cost than service to other distributors using different delivery systems such as cable operators. First R&O, 8 FCC Rcd at 3406. In addition, we assessed whether a vendor may take into account cost differences incurred by distributors in providing service to subscribers, and concluded that this would be contrary to the purposes of the Act as it could artificially raise the retail price of programming and discourage the development of low-cost technologies. First R&O, 8 FCC Rcd at 3406.

12. Petitioners contend that the Commission should allow a programming vendor to consider the differences in distributors' costs, e.g. costs at the retail level. The Commission reaffirms its prior determination that a programming vendor may not take into account distributors' cost differences at the retail level. In response to a petition claiming that the Commission pre-judged questions regarding possible cost justifications for pricing differentials in sales to home satellite dish distributors, we state that we have not pre-judged the costs that may be involved in supplying programming to HSD distributors in any particular situation, but merely recognized that cost differentials can exist and may be used to justify a price differential.

VII. Effective Date/Application of the Rules

13. In First R&O, the Commission determined that the rules adopted under Section 628 apply prospectively to all existing contracts, whether the contracts were executed before or after the effective date of the rules. The Commission based its determination on its belief that by expressly grandfathering only a narrow class of contracts in Section 628(h), Congress did not intend to exempt generally all existing contracts from the scope of the anti-discrimination requirements of section 628 and on the fact that the long term nature of many programming agreements would delay for several years the uniform implementation of the anti-discrimination rules. First R&O, 8 FCC Rcd at 3415. To avoid disruption to the market and to the entities involved, the Commission afforded the parties until November 15, 1993 (120 days after the effective date of the new rules) to bring their agreements into compliance. *Id.*; 47 CFR 76.1002(f). Petitioners contend that the rules should not apply to existing contracts. The Commission reaffirms its determination in the First R&O that only the narrow class of contracts, grandfathered by section 628(h) are exempt from the Commission's rules.[4]

VIII. Subdistribution Agreements

14. Subdistribution agreements are sales agreements between a programming vendor and, in most instances, a franchised cable operator, through which the franchised cable operator sells the vendor's programming to competing MVPDs. In the First R&O, the Commission expressed its concern that in areas served and unserved by a cable operator a distributor's access to programming may be impaired by the use of subdistribution agreements. The Commission's rule 76.1002(c)(3) limited subdistribution agreements by prohibiting all subdistribution agreements in unserved areas and placing limitations on such agreements in served areas. These limitations prohibit the cable operator who subdistributes a vertically integrated programming service from requiring a competing MVPD to purchase additional or unrelated programming as a condition of such subdistribution; to provide access to private property in exchange for access to programming; or from charging a competing MVPD more for the programming than the programming vendor itself would be permitted to charge. The rule further requires any cable operator acting as a subdistributor to respond to a request for access to the programming by a competing MVPD within fifteen (15) days and requires that if its request is denied, the competing MVPD be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor. 47 CFR 76.1002(c)(3)(iii).

15. Petitioner requested the Commission to clarify the rules on subdistribution agreements so that the same rules apply to served and unserved areas. We have determined that there is no need to prohibit all subdistribution arrangements in unserved areas, as long as no cable operator has exclusive subdistribution rights in unserved areas and, thus, an MVPD would have a choice of outlets for its programming needs. The requirement in § 76.1002(c)(3)(iii) to allow direct negotiations with the programmer is intended to make all subdistribution agreements in served areas nonexclusive. Therefore, the Commission amends its rules to clarify that nonexclusive subdistribution arrangements both in served and unserved areas are treated consistently and subject to the protection provided by the requirements of § 76.1002(c)(3)(iii).

IX. De minimis Price Differentials and Similarly Situated Distributors

16. In the First R&O, the Commission determined that in price discrimination cases, in order to conserve administrative resources and avoid protracted adjudication solely to resolve accounting issues, we will not require a vendor to justify the magnitude of a price differential between a complainant

[4] Three additional petitions were filed that relate to the effective date of the program access rules. The issues raised in those petitions are now moot. Specifically, a petition was filed contending that the program access rules against exclusive contracts should be deemed effective immediately upon the enactment of the 1992 Cable Act (December 4, 1992) or on the effective date of the Commission's program access rules (July 16, 1993) in contrast to delaying the effective date of the rules until the end of the 120 day renegotiation period that was provided for under the rules. Because the rules are now effective, the issue raised is moot. Another petition was filed requesting the Commission to specify a specific date before which any party intending to enforce an existing exclusive programming agreement must file an exclusivity petition. Petitioner contended that the 120-day renegotiation period before the program access rules became effective applies only to discrimination barred by the rules and not exclusive agreements. Because all existing contracts must be in compliance with the rules, this request also is moot. Finally, petitions were filed contending that distributors seeking to revise existing contracts should be required to demonstrate that the current contracts terms have the purpose or effect to harm the distributor's ability to compete. Petitioners contended that under this proposal only the contracts that create a potential for harm will need to be reformed, while other agreements can be brought into strict compliance with the rules as they come up for renewal, thereby avoiding administrative upheavals to programmers. The November 15, 1993 deadline by which all contracts were required to come into compliance with the Act and our rules has now passed and thus these issues are moot.

and its competitor that is equal to or less than five cents per subscriber or five percent, whichever is larger, so long as the vendor provides sufficient reasons, justified by the statutory factors, for a difference in price. First R&O, 8 FCC Rcd at 3420. The Commission further determined that, although an MVPD can bring a discrimination claim merely by demonstrating that another MVPD with which it does or proposes to compete has received more favorable terms from the vertically integrated programming vendor, the competing MVPD identified by the complainant may not be a proper point of comparison. *Id.* at 3401. Therefore, the Commission determined that, in justifying the price, terms and conditions of a contract, a programming vendor may demonstrate that the proper comparison is between the complainant and a similarly-situated distributor, rather than the complainant and the competitor named in the complaint. *Id.* at 3401–02.

17. Petitioner sought, and we grant the request, for clarification that under § 76.1003(d), once a programmer has persuaded the Commission that a "similarly-situated" competitor is the proper focus for comparison, the same rationale would apply with respect to making a determination as to whether the price differential is *de minimis*. That is, the price charged or offered to the complainant will be compared to the price charged to the similarly-situated distributor.

X. Buying Groups

18. Section 628(c)(2)(B) allows a programming vender to justify differences in price, terms or conditions of sale of programming on factors such as economies of scale or other efficiencies to the programming vendor due to the number of subscribers served by the distributor. In the First R&O, the Commission stated that in order to benefit from unitary treatment for purposes of subscriber volume, a buying group should offer advantages similar to a single distributor, including assurance of satisfactory financial performance. 8 FCC Rcd at 3411. The Commission adopted a definition of a buying group requiring the group to be financially liable for any fees due under a programming contract which it signs or whose members agree to joint and several liability. *Id.* at 3412; 47 CFR 76.1000(c).

19. Petitioners claimed that the definition of "buying group" in the rules offers little or no assurance that such buying group is capable of satisfying its financial obligations because it enable members of the group to shift all liability to the corporate entity acting as the buying group, without requiring each member to agree to joint and several liability. While we affirm the definition of buying group in § 76.1000(c) as adopted, to address the concerns raised by the petitioning parties, we clarify that, in those situations where a seller has reasonable doubts about the financial stability and responsibility of the buying group, it may insist on appropriate assurances of creditworthiness. Buying groups could satisfy this burden through various measures, such as requiring each individual member of the group to guarantee to the group its pro rata share of the fees due under a programming contract.

XI. Competing Distributors

20. Section 628(c)(2)(B) requires the Commission to adopt regulations which prohibit discrimination in the prices, terms, and conditions of sale or delivery of programming. In the First R&O, the Commission determined that discrimination exists when the same programming is sold to a competing distributor at a different price without justification by one of the factors enumerated in section 628(c)(2)(B). To establish that another distributor is a competitor, the Commission requires some overlap in actual or proposed service area, First R&O, 8 FCC Rcd at 3400. The Commission received petitions for reconsideration with respect to the definition of competing distributor, requesting that the Commission require cable operators bringing complaints of discrimination to show a substantial (at least 50%) overlap with the service area of a competing MVPD. The Commission does not find that a change in the definition of a competing distributor is necessary or justified.

XII. Clarifying the First R&O

21. On our own motion, we take the opportunity in this Order to emphasize certain procedural requirements under the program access rules and clarify the discussion of those requirements in the First Report and Order.[5] The Commission initially notes that the actual rules that set forth the procedural requirements for program access complaints are clear that they apply both to section 628(b) and section 628(c) cases. 47 CFR 76.1003(a)–(s). However, these procedural requirements are not consistently discussed throughout the text of the First Report and Order. The Commission emphasizes here that these procedural requirements are applicable to every type of program access complaint.

22. For example, the First R&O discusses the requirement set forth in the rules that prior to filing a complaint, the complainant must notify the opposing party of its intention to file a complaint.[6] This pre-complaint notice provision is applicable to all program access complaints. Similarly, the First R&O discusses the one year "statute of limitations" within which to bring complaints.[7] This one year limit is applicable to all types of program access complaints. In addition, the First R&O discusses the contents of program access complaints and states that they must specify the relief requested.[8] This requirement is applicable to all program access complaints.

XIII. Ordering Clauses

23. Accordingly, it is ordered, that the Petitions for Reconsideration are granted in part and denied in part, as indicated above and to the extent that Petitions raise issues concerning exclusive contracts with non-cable distributors, they will be disposed of in future orders.

24. It is further ordered that part 76 of the Commission's rules, 47 U.S.C. part 76, is amended, as set forth below.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Amendatory Text

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

Part 76—Cable Television Service

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.1003 is amended by revising paragraph (h) to read as follows:

§ 76.1003 Adjudicatory proceedings.

* * * * *

[5] See 47 CFR 1.108.

[6] See First R&O, 8 FCC Rcd at 3416, 3422, 3424. In addition, the general Complaint and Enforcement Procedures contain a notice requirement provision. *Id.* at 3389.

[7] *Id.* at 3416, 3422, 3425. There also is a one year statute of limitations set out in the general Complaint and Enforcement Procedures. *Id.* at 3389.

[8] *Id.* at 3389, 3422, 3425.

(h) *Confidentiality of proprietary information.* (1) Any materials generated or provided by a party in connection with the pre-complaint notification procedure required under § 76.1003(a) and in the course of adjudicating a program access complaint under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(2) Except as provided in paragraph (h)(3) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(3) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The opposing party will have an opportunity to respond to such requests.

(4) The persons designated in paragraphs (h) (2) and (3) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(5) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (h) (2) or (3) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(6) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

* * * * *

3. Section 76.1002 is amended by removing paragraph (c)(3)(i) and redesignating (c)(3)(ii) and (c)(3)(iii) as paragraphs (c)(3)(i) and (c)(3)(ii), respectively, and revising them to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) *Exclusive contracts and other practices and arrangements.** * *

(3) *Specific arrangements: subdistribution agreements.*—(i) *Unserved and served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served or unserved by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section.

(ii) *Limitations on subdistribution agreements.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to:

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

* * * * *

[FR Doc. 94–31561 Filed 12–22–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 909, 952, and 970

RIN 1990–AA95

Acquisition Regulation; Alteration of Organizational Conflicts of Interest Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the Department of Energy Acquisition Regulation (DEAR) to clarify certain aspects of DOE's organizational conflicts of interest (OCI) regulations. The amended regulations are intended to make the OCI regulations more easily understood and more easily followed by DOE procurement, program, and legal personnel, DOE contractors, and entities proposing to do work for DOE or its contractors.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, U.S. Department of Energy, Procurement Policy Division (HR–521.1), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8264

Edgar Merson, U.S. Department of Energy, Office of the Assistant General Counsel for Procurement and Finance (GC–61), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6902

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
B. Section-by-Section Analysis
II. Procedural Requirements

A. Review under Executive Order 12291
B. Review under the Regulatory Flexibility Act
C. Review under the Paperwork Reduction Act
D. Review under the National Environmental Policy Act
E. Review under Executive Order 12612
F. Review under Executive Order 12778

I. Background

A. Discussion

DOE is one of only two Federal agencies, the other being the Nuclear Regulatory Commission, that have a statutorily based OCI system. DOE's system is founded on section 401 of Pub. L. 95–39, as that statute applied to the Energy Research and Development Administration (codified at 42 U.S.C. Sec. 5918) and section 10 of Pub. L. 95–70, as that statute applied to the Federal Energy Administration (codified at 15 U.S.C. 789). On October 1, 1977, those two agencies and others were joined to form the Department of Energy.

The proposed rule soliciting comments on proposed changes leading to this final rule was published on July 16, 1993, at 58 FR 38340. As stated there, the proposed changes were intended to clarify the preexisting DOE OCI rule.

B. Section-by-Section Analysis

Comments were received from nine commenters: four corporations, two professional societies, one individual, and two DOE procurement organizations.

1. Definitions.

At 909.570–3, we proposed to delete the phrase "the principal purpose of which" from the definition of "evaluation services" and "technical consulting and management support services." We explained that DOE's organizational conflicts of interest system should apply to contracts even where these types of services are involved in contract performance but are not the principal purpose of the contract.

Four of the commenters took exception to this change with respect to "evaluation services," and two objected with respect to "technical consulting and management support services." One concern expressed was that there would be confusion on the part of the contractors as to whether "a particular contract is for evaluation services or activities." The solicitation and contract will contain the appropriate organizational conflicts of interest provisions when DOE has determined that a specific requirement involves either or both of these types of covered services.

The remaining commenters based their objections on a concern that the result would be that organizational conflicts of interest provisions would be applied when they were not appropriate. We disagree. It is clear that the "principal purpose" language was present to limit application of organizational conflicts of interest; however, it is apparent that contracts may have minor portions of the statement of work that deserve OCI attention. For example, a contract for guard services that would not be covered per se may contain provision for incidental services to develop a plan to enhance security at the facility. Clearly, the development of such a plan, were it procured under a separate contract, would on its own be considered either evaluation services or activities or technical consulting and management support services or both. The dangers of bias, depending upon a contractor's interests, and unfair competitive advantage are both present. In fact, the plan may serve as the basis for the procurement of security enhancements under a separate contract. Yet, because it is a comparatively small part of a larger contract under the definitions that were at 909.570–3, there would be no OCI coverage under the preexisting regulations. This result is untenable.

The concern for misapplication is best answered by looking at whether the scope of the contract includes services that are properly described as "evaluation services or activities" or "technical consulting and management support services." A contract would not be covered if there is no provision for assignment of such evaluative tasks within the scope of the contract. For example, if a security guard notices a security deficiency at the facility, he or she would be expected to bring it to the supervisor's attention in the normal course of business, and this would involve no OCI implication. The mere expression of an opinion or recommendation in the performance of a contract would not give rise to OCI coverage.

In the definition of "organizational conflicts of interest," the rule proposed to delete the phrase "either directly or indirectly, through a client relationship" and insert "reasonably" to guide any test of the existence of an organizational conflict of interest with regard to a specific offeror. Three commenters objected. One commenter was concerned that the remaining phrase describing the interests to be considered in determining the presence of an organizational conflict of interest may affect or be affected by "approved technology transfer initiatives." The remaining phrase describing the interests to be taken into account is "past, present, or currently planned interests that relate to work to be performed under a Department contract." All interests, including "technology transfer initiatives" meeting that test should be evaluated by the Contracting Officer in making the OCI determination. However, one must remember that the mere existence of an interest relating to the work to be performed under the specific contract does not mean that an organizational conflict of interest is present.

A second commenter disagreed with the "relate to" language. The commenter was concerned that an offeror would be put in the position of "providing unlimited data which, as a threshold matter, may not be relevant to its capacity to give impartial advice or result in an unfair competitive advantage." We believe that the obligation to disclose interests that relate to the work to be performed under the proposed contract is clearer than the previous requirement which arguably was dependent upon whether the offeror considered the otherwise relevant interest to result in bias or an unfair competitive advantage. The analysis of the effect of the interest or interests is the responsibility of the contracting officer, and the proposer is not in the position of drawing an objective conclusion of the effect of an interest. More importantly, the contracting officer may determine the potential for bias or unfair competitive advantage, not from one interest, but from two or more interests, any of which alone would not be considered significant.

The third commenter did not agree with the proposed insertion of "reasonably" on the grounds that the "safe course for a contracting officer to take when faced with this standard is to conclude that virtually all situations may reasonably give rise to an OCI." We have deleted "reasonably," though its inclusion in the proposed rule was intended to help assure that consideration of interests would not be affected by remote relationships.

As will be discussed in more detail later, the standard that the contracting officer is to apply in making the determination as to the presence of an organizational conflict of interest is whether there is "little or no likelihood" of an organizational conflict. That test is taken from the underlying statutes and has formed the basis of the OCI determination since the promulgation of the implementing regulations.

2. Relationship of Interests

Three commenters took exception to the proposed substitution of the standard for contractual requirements that merit particular attention at 909.570–4(a). Previously, this standard was those contractual requirements that "call for the rendering of advice, or consultation or evaluation services, or similar activities *that lay the direct groundwork for* the Department's decisions * * *." The proposed rule substituted "*are expected to play a part in* * * *." (emphasis added)

All three comments were founded upon the same grounds, which are best represented by the comment of one of the three: "As proposed, this revision will cause activities that are only very tangentially related to be considered to create an OCI and will remove any rule of reason in determining when an OCI exists."

We disagree and have included the change. This language is not intended to describe when the contracting officer should determine that an organizational conflict of interest exists. We believe that the commenters have been misled by the change in the heading of 909.570–4, "Criteria for recognizing organizational conflicts of interest." In that particular part of the regulation, the material is intended to aid the contracting officer in determining whether a particular statement of work is subject to organizational conflicts of interest concerns. In other words, this guidance goes to whether the contracting officer would require that the solicitation include the organizational conflicts of interest solicitation provision at 952.209–70 and whether the model and final contracts would contain the clause at 952.209–72.

No comments were received about the other minor changes proposed to be made to 909.570–4(a) and 909.570–4(b)(4) and (b)(7).

No comments were made about the proposed changes to 909.570–5(a). These changes are mirrored in proposed changes to the solicitation provision and will be discussed there.

The rule proposed to create a new paragraph 909.570–5(b) from the content of the second half of paragraph (a). This new paragraph would modify the requirement for the submission of a new or updated disclosure for "all modifications * * * except those issued under the Changes clause" to those "that exercise an option or otherwise meaningfully extend the period of performance or add work of the type noted above to the contract." One commenter objected, apparently not recognizing that the required frequency of new or updated disclosure would be reduced.

In addition, the OCI clause contains a requirement for postaward disclosure. If the contractor has fulfilled that responsibility, this requirement would be little more than a formality.

3. Avoidance and Mitigation

Five commenters disagreed with the proposed changes to 909.570–5(c). We believe they have misinterpreted the proposed changes. The changes consisted of the proposed deletion of the words "or mitigated" from the last portion of the sentence that had previously been 909.570–5(b) and the insertion at 909.570–5(c) of the sentence that states, "[a]n organizational conflict of interest has been avoided when the actions taken to remedy it result in there being little or no likelihood of an organizational conflict of interest."

The comments were based upon the belief that these changes deny the contracting officer the flexibility to mitigate a situation that has been determined to be an organizational conflict of interest. In fact, the applicable statute requires that an organizational conflict of interest, once identified, be avoided or award may not be made in the absence of a determination that award otherwise is in the best interests of the United States. The statute and implementing regulations have provided that "little or no likelihood of an organizational conflict of interest" is the standard or threshold for the decision as to whether a particular fact or facts amount to an organizational conflict of interest. Any greater likelihood amounts to an organizational conflict.

Mitigation, on the other hand, describes the situation in which the actions taken to remedy an organizational conflict of interest taken have not reduced the conflict of interest to the required level of "little or no likelihood." That result is not enough to allow an award, absent the public interest determination described above.

It was the intent of the added sentence to make it clear that the test for avoiding an organizational conflict was the same as the test for determining the existence of the organizational conflict initially, "*little* or no likelihood." In other words, there may be some remote possibility of an organizational conflict of interest, and the contracting officer may determine that an organizational conflict does not exist. If, on the other hand, having determined that an organizational conflict does exist, the contracting officer may determine that the steps taken to remedy the conflict reduce the concern to the level of "*little* or no likelihood," which actions have thereby avoided the organizational conflict of interest.

This change then does not interfere with the exercise of discretion by the contracting officer in avoiding an identified organizational conflict of interest. Rather, it makes clear that the test for determining whether an organizational conflict of interest exists is the same, *i.e*, "little or no likelihood," whether it is applied in the original analysis or after having taken steps to remedy an organizational conflict of interest that was initially determined to exist.

4. Subsequent Bars

With regard to any bar of the successful firm from subsequent competitions, five commenters requested that the sentence of 909.570–6 requiring that "[t]his is a variable; and in no event shall an exclusion be stated which is not related to a specific expiration date or an event certain" be retained. We believe that this sentence is redundant in light of the two preceding sentences, *i.e.*, "[s]uch notice shall specify the proposed extent and duration of any special restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage."

Two of the commenters took exception to the proposed addition to the last sentence. That addition was intended to make clear that the absence of a bar in a previous contract will not prohibit the contracting officer from considering the relationship of the two requirements as a basis for finding an organizational conflict of interest in the award of the second requirement, based upon bias or unfair competitive advantage. We believe this conclusion is statutorily directed. However, until now, the statement has not been made, and DOE contracting personnel may have been misled. We have retained all the changes to 909.570–6.

No comments were received to the proposed changes to 909.570–7.

5. Deletion of "the General Clause"

Two comments were received with regard to 909.570–8. One commenter objected to the proposed deletion of the provision for the general organizational conflicts of interest clause at 952.209–71. The commenter illustrated its position by referring to "standard architect-engineer/construction services, where disclosures are routinely required (both for prime contracts and subcontracts) where there are no

relevant facts which could give rise to an organizational conflict of interest and the contractor warrants that this is the case." We believe that generally a standard A–E contract, that is, a contract for design services, would not be subject to organizational conflicts of interest processing. Certainly, a requirement for technical consulting or management support services or evaluation services or activities involving an A–E firm would be covered, as it would for any entity. Were the requirement subject to OCI processing, the fact that the offeror represented that it had no relevant facts to disclose would have no bearing on which clause to use.

We are deleting the clause formerly at 952.209–71. The clause was an abbreviated version of the special clause. It (1) did not extend to affiliated entities of the contractor, (2) did not contain the bars in paragraphs (b)(1) and (b)(2) of the special clause, and (3) did not contain the prohibition against award of OCI covered subcontracts without the determination by the DOE contracting officer as to the proposed subcontractor's organizational conflicts of interest. We believe these omissions to be meaningful in the administration of the clause, and, the omission was not appropriate for contracts that are subject to organizational conflicts of interest processing.

The second commenter suggests the substitution of the word "duration" for "time period" as it appears in the last sentence of 909.570–8(b)(5) because "duration" may "tie to a completion of an activity rather than a date." We agree and have made the change.

6. "Little or no Likelihood"

Five commenters have proposed changes to 909.570–9. The first suggests that the phrase "or other means" which was proposed to be added to subparagraph (a)(3) also be added to subparagraph (a)(2) for consistency's sake. We have made this change but differently than suggested. The phrase has been added to subparagraph (a)(2), and the phrase "by an appropriate contract clause or other means" has been deleted from subparagraph (a)(3).

The other four commenters object to the proposed statement "[i]f the contracting officer determines that there is more than little or no likelihood of an organizational conflict of interest, then an organizational conflict of interest exists with regard to that particular offeror." The commenters express the view that the term "more than little or no likelihood" should be defined.

First, the previous proposed sentence states that a basic concept of the Department's organizational conflicts of interest system is that an organizational conflict of interest does *not* exist if there is "little or no likelihood" of an organizational conflict of interest in the performance of the contract by the particular offeror being evaluated. That test is taken from sec. 401 of Pub. L. 95–39 (42 U.S.C. 5918(b)). The sentence preceding the sentence in question makes that point clear.

The sentence that has been objected to then states the obverse, *i.e.*, that, therefore, facts that indicate a *larger* likelihood of an organizational conflict than "little or no likelihood" then indicates the existence of an organizational conflict of interest with respect to the performance of the contract by the particular offeror being evaluated. These concepts are, like so many other legal and regulatory concepts, imprecise. The statute does not define the phrase "little or no likelihood," nor do we believe that any attempt by ourselves or others would make it more precise. We believe that facts may exist with respect to the offeror that could indicate a possibility, *i.e.*, "little likelihood," of an organizational conflict and yet the contracting officer not be bound to find one. In other words, the test does not require the absolute absence of possibility.

With this background, the sentence objected to is merely stating the other side of the proposition, which has always been the case. If the contracting officer determines that there is more than a "little likelihood" of an organizational conflict of interest, then one exists for the purpose of the DOE system, with the result that award may not be made unless the risk is reduced to the level of "little likelihood" or "no likelihood" by some manner of mitigation or that the statutorily required determination is made that award is in the public interest and that determination is published in the **Federal Register** in accordance with 909.570–9(a)(3). We believe that no definition of the phrase "more than little or no likelihood" is necessary. It merely describes the situation in which the contracting officer *cannot* reasonably say that there is "little or no likelihood" of an organizational conflict of interest with respect to the statement of work by a particular offeror.

One commenter did not agree with the proposed changes made at 909.570–10, wanting to retain the current language. We believe the proposed changes are more accurate than the current language and will be of greater assistance to contracting officers in the consideration of OCI situations occurring after contract award. We have, therefore, adopted the proposed changes in the final rule.

7. Subcontracts

Two commenters objected to the proposed change at 909.570–12 which deleted the phrase "except that subcontractors shall not normally be required to submit the disclosure or representation if such subcontract is for supplies." The commenters believe that this deletion creates an uncertainty as to the intended meaning and that the deletion might suggest that the organizational conflicts of interest system might, in fact, apply to subcontracts for supplies.

We disagree. The system applies *per se* to those prime contracts and subcontracts that involve the providing of evaluation services or activities or technical consulting and management support services. This point is made clear in the proposed rule at 909.570–12 following the deletion of the phrase noted above by the addition of the phrase "*i.e.*, evaluation services or activities or technical consulting and management support services." A similar clarifying change has been made to paragraph (d)(1) of the clause at 952.909–72.

We believe that the DOE OCI system would apply to prime contracts or subcontracts for supplies only in the rarest instance. We made this change because we believe that the former language of DEAR 909.570–11 presented a greater danger of misapplication of the DOE OCI system to subcontracts for supplies than the revision resulting from this final rule.

8. Solicitation Provision

Five commenters disagreed with the proposed altering of the disclosure requirement in paragraph (a)(1) of the solicitation provision at 952.209–70. The change that appears there would require the disclosure of "all relevant facts * * * relating to the work described in the statement of work of this solicitation." In the proposed rule we deleted the phrase "bearing on whether the offeror has a possible conflict of interest." The commenters were concerned that without the qualifying phrase, the disclosure obligation is less clear and more open-ended.

We disagree. As explained in the preamble to the proposed rule, we believe the test of whether a relevant fact bears "on whether the offeror has a possible conflict of interest" adds a complicating and subjective test on top of a relatively simple identification of whether the offeror has an interest(s) that relates to the work to be performed

under the statement of work. We do not agree that this change results in an open-ended obligation to provide data. In order to identify relevant facts that bear upon a possible conflict of interest, the offeror must first identify relevant facts and then determine whether any of those facts, in its mind, bear upon a possible conflict of interest. This change merely does away with the second step. Relevant facts intuitively are those that relate to the statement of work, *e.g.*, investments involving the technology, licensing agreements involving the technology, client relationships involving work like the work to be performed.

One commenter questioned the requirement for the offeror to provide a copy of the Securities and Exchange Commission's Form 10k, if it is required to file one. DOE's internal OCI procedures have called for contracting officers to acquire a copy of the Form 10k for over ten years. This comes under the statutory language "information otherwise available." It, along with the annual report, or comparable information from privately held corporations, is used to confirm the disclosure or representation of the offeror.

This change assures that the Form 10k will be forthcoming with the proposal, thereby saving time in acquiring the report. It is a report that is publicly available, for its intended purpose is to allow those who choose to avail themselves of it to make informed investment decisions. This is not a report that must be created in any way for submission to DOE. That commenter suggested that the contracting officer acquire the Form 10k from the Securities and Exchange Commission. We disagree. The offeror is in the best position to know whether it has the obligation to file it with the SEC and to provide it, if they have filed it with the SEC.

We are, however, simplifying the requirement such that the offeror need supply only the form and a list of attachments, rather than filing the attachments themselves.

One commenter noted that the exclusion of the clause at 952.209–71 will result in the use in all cases of the clause at 952.209–72, with the latter subjecting "all work to the bar." We agree, but each of the bars is conditional. If the qualifying condition does not occur then no bar is effective, even if the OCI clause is used.

Two commenters questioned the substitution of "meaningfully" for "substantially" in paragraph (g) of the clause at 952.209–72 with regard to the submission of a new or updated disclosure or representation if the period of performance is extended. We have used the current term and have deleted "meaningfully" from the rule. We have, however, added the phrase "an option is to be exercised or the period of performance is otherwise significantly increased." This makes the provision consistent with the regulation at 909.570–5(b).

9. OCI Clause

Five commenters disagreed with the proposed changes to paragraph (c)(1) of the clause at 952.209–72. In that paragraph the post award obligation to disclose was clarified and made consistent with the change that calls for the offeror to disclose relevant facts. The previous language in paragraph (c)(1) required the contractor to disclose conflicts of interest that it discovers after award. Under the current language, in order to discover a conflict of interest, the offeror will have had to identify the interest initially and then judge whether that change presents a conflict of interest.

We believe that the proposed change simplifies this obligation. Only the change in facts, *i.e.*, additional interests, changes in disclosed interests, will need to be identified by the contractor. The contracting officer will then be in a situation to evaluate the implications of the change in relevant facts on continued performance under the contract. To the extent that the contractor fulfills its obligations under this paragraph, the conditions for required disclosure under paragraph (g) will be dramatically reduced.

The essence of the concerns expressed here parallel those discussed earlier with regard to the change to the disclosure requirement, *i.e.*, that the requirement has been made vaguer. We disagree. The obligation to describe relevant interests alone is simpler and requires less judgment by the offeror or contractor than the additional judgment as to which, if any, of those relevant facts, bear upon a possible organizational conflict of interest.

Three commenters then did not agree with the related changes proposed to be made to paragraph (c)(2), which states that a failure to report relevant interests known at the time of disclosure or representation may result in the termination of the contract for default. The current paragraph (c)(2) states that the termination for default may result where an organizational conflict of interest was known but not reported. We believe that the changed language presents the contractor with less risk than the current language. The determination of organizational conflict of interest is inherently more subjective than the mere identification of relevant interests.

The final comment noted that the new title for the clause at 970.5204–36 contained a typographical error with the inclusion of "of" after "University." We have made this correction.

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that executive order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses will apply only to contracts which are awarded after the effective date of the final rule, and, thus, will have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a

substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule revises certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 909, 952, 970

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on December 12, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 909—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 909.5—Organizational Conflicts of Interest

2. Section 909.500 is amended by adding the following as the second sentence:

§ 909.500 Scope of subpart.

* * * However, the coverage at FAR subpart 9.5 regarding marketing consultants does apply to DOE acquisitions.

3. Section 909.570–3 is amended by revising the definitions for "Evaluation services or activities," "Organizational conflicts of interest," and "Technical consulting and management support services" to read as follows:

§ 909.570–3 Definitions.

* * * * *

Evaluation services or activities means any work or effort involving the independent study of technology, process, product, or policy.

* * * * *

Organizational conflicts of interest means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that relate to the work to be performed under a Department contract and such interest or interests may reasonably (1) diminish an offeror's or contractor's capacity to give impartial, technically sound, objective assistance and advice, or (2) result in an offeror's or contractor's being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

* * * * *

Technical consulting and management support services means any work or effort to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies. Such services typically include assistance in the preparation of program plans; evaluation, monitoring, or review of other contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work; and may involve the contractor's being given access to data confidential to the Department or proprietary to others.

4. Section 909.570–4 is amended by revising the last sentence of paragraph (a) and by revising paragraphs (b)(4) and (b)(7) to read as follows:

909.570–4 Criteria for recognizing organizational conflicts of interest.

(a) * * * While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interest, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that are expected to play a part in the Department's decisions on future acquisitions; research, development, and demonstration programs; production activities; the formulation of departmental policy; and regulatory activities.

(b) * * *

(4) Contract performance involving access to information proprietary to third parties which cannot lawfully be used for purposes other than those authorized by those third parties.

* * * * *

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor would be regulated or is providing, or is currently planning to provide, assistance on the same or similar matter to any organization regulated by the Department.

* * * * *

5. Section 909.570–5 is revised to read as follows:

909.570–5 Disclosure of organizational conflicts of interest.

(a) When submitting solicited and unsolicited proposals for (1) evaluation services or activities; (2) technical consulting and management support services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the

resulting contract, offerors shall be required to identify and disclose information about contracts, investments, and all other interests relating to the work to be performed under the proposed contract or complete the representation in accordance with 909.570–7.

(b) This requirement shall also apply to modifications of contracts of the types noted in paragraph (a) of this section that exercise an option or otherwise meaningfully extend the period of performance or add work, of the type noted in paragraph (a), to the contract. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement need be submitted. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(c) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no award of a contract or contract modification covered by 909.570–7 shall be made until the organizational conflict of interest has been avoided, except as provided in 909.570–9. An organizational conflict of interest has been avoided when corrective actions taken to remedy it result in there being little or no likelihood of an organizational conflict of interest.

6. Section 909.570–6 is revised to read as follows:

909.570–6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570–7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. Another type of organizational conflict of interest may exist in that work to be performed will lead to a subsequent requirement with the result that the successful proposer on the current solicitation will be barred by operation of paragraph (b)(1)(i) of the clause at 952.209–72 from proposing on the later solicitation. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing the offerors (a) that such a potential conflict is foreseen and (b) of any special contract clause or provision designed to avoid or mitigate such conflict that will be included in any resultant contract as required by 909.570–8(a). Such notice shall specify the proposed extent and duration of any special restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly (*i.e.*, arising out of or relating to) from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction. Nevertheless, this absence of restriction shall not preclude the contracting officer from finding that, in light of performance of the prior contract, an organizational conflict of interest would or may exist.

7. Section 909.570–7 is revised to read as follows:

909.570–7 Disclosure or representation.

The contracting officer shall include the provision at 952.209–70, Organizational Conflicts of Interest-Disclosure or Representation, in all solicitations, including those for scope modifications, and offerors shall accordingly disclose or represent in their proposals, including unsolicited proposals for (a) evaluation services or activities; (b) technical consulting and management support services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (d) other contractual situations where special organizational conflicts of interest issues are identified. Section 909.570–15 of this part contains a suggested outline for the disclosure submission.

8. Section 909.570–8 is revised to read as follows:

909.570–8 Contract clauses.

(a) *Special contract clause.* The contracting officer shall include the clause at 952.209–72, Organizational Conflicts of Interest, in all contracts for evaluation services or activities or technical consulting and management support services.

(b) *Specially drafted contract clauses and provisions.* If it is determined from the nature of the proposed contract that a specifically identified, potential organizational conflict of interest may exist, the contracting officer may determine that such conflict can be avoided through the use of an appropriate specially drafted additional contract clause. Examples of the types of clauses which may be employed include, but are not limited to, the following:

(1) Hardware exclusion clauses which prohibit the contractor's acceptance of production contracts following a related design contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and/or certain of its key personnel) to avoid conduct deemed to cause an organizational conflict of interest;

(4) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(5) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work. If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and duration of any restrictions.

9. Section 909.570–9 is amended by revising the introductory text of paragraph (a) to read as follows and adding the phrase "or other means" after "by an appropriate contract clause" in the first sentence of paragraph (a)(3):

909.570–9 Evaluations, findings, and contract award.

(a) The contracting officer shall evaluate all relevant facts submitted by an offeror pursuant to the requirement of 909.570–6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation of all such information in accordance with the criteria of 909.570–4, and prior to any award, the contracting officer shall make a finding as to whether a possible organizational conflict of interest may exist with respect to a particular offeror. If the contracting officer determines, in light of all relevant facts, that, with respect to a particular offeror, there is little or no likelihood of an organizational conflict of interest, then no organizational conflict of interest exists for purposes of making the contract award. Conversely, if the contracting officer determines, however, that there is more than little or no likelihood of an organizational conflict of interest, then an organizational conflict of interest exists with regard to that particular offeror. When formal

Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

* * * * *

10. Section 909.570–10 is revised to read as follows:

909.570–10 Action in lieu of termination.

If, after award, changes in relevant facts with respect to the awardee, whether based upon information supplied by the awardee or gathered from other sources, cause the contracting officer to conclude that a organizational conflict of interest exists and that it would not be in the best interest of the Government to terminate the contract as provided in the clause at 952.209–72(e), the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

11. Section 909.570–12 is revised to read as follows:

909.570–12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570–7 from subcontractors and consultants whose subcontract calls for the performance of services similar to those provided by the prime contractor, *i.e.*, evaluation services or activities or technical consulting and management support services. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer, and their disclosure or representation shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contract clause at 952.209–72, entitled Organizational Conflicts of Interest, requires that the contractor (and each succeeding lower tier subcontractor) include that clause in subcontracts or consultant agreements involving work covered by this subpart.

12. Section 909.570–14 is amended by revising paragraphs (b)(4), (b)(5), (b)(7), (b)(8), and (b)(12); by adding the word "not" after "these companies may" in the last sentence of paragraph (b)(6); by replacing "suggests" with "produces" and by replacing "in requests" with "in a request" in the second sentence of paragraph (b)(9); and by adding a comma after "OCI" and removing the word "plants" in the fourth sentence of paragraph (b)(11). These amendments are set forth to read as follows:

909.570–14 Examples.

* * * * *

(b) * * *

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI. The contract should have contained the OCI clause barring Company A from competing for supply of a refrigerator based upon the specification it prepared.

(5) Company A designs or develops new electronics equipment under a DOE contract and delivers descriptive specifications as part of the final report. DOE then issues a solicitation for procurement of that electronics equipment including a statement of work that reflects the descriptive specifications. *Guidance.* Normally this would not constitute an OCI. The contract should have contained the OCI clause barring the company from competing to supply the electronics equipment.

* * * * *

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. *Guidance.* This situation will turn on whether the software that was developed might have limited the potential source for the equipment. If the answer were yes, the contract should have contained the OCI clause barring competition for the equipment. However, if the software were not so limited, this would not constitute an OCI, and Company A would not be barred from at least the initial ADP hardware acquisition necessary to accommodate the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will use in the purchase of rocket fuels. The company has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop the fuels. *Guidance.* Normally this would constitute an OCI, and Company A shall not be permitted to bid on the acquisition to develop the fuels.

* * * * *

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this same solicitation. *Guidance.* Normally this would constitute a conflict, and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (*e.g.*, when the competitive field is limited) to allow a separate division or affiliate of Firm A to submit a proposal. In such a case, of course, Firm A must obtain a waiver from the Department of Energy contracting officer and would not be permitted to participate in the evaluation of this proposal. Such evaluation would be performed by DOE or another DOE contractor.

909.570–15 [Amended]

13. Section 909.570–15 is amended by adding the phrase "interests and" after "currently planned" the second time that phrase appears in paragraph (a).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

15. Section 952.209–70 is revised to read as follows:

952.209–70 Organizational conflicts of interest—disclosure or representation.

Contracting officers shall insert the following provision in solicitations in accordance with 909.570–7.

Organizational Conflicts of Interest—Disclosure or Representation (Dec. 1994)

(a) It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased due to any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(1) As required by section 401 of Pub. L. 95–39 (42 U.S.C. 5918(a)) and section 10 of Pub. L. 95–70 (15 U.S.C. 789(a)), the offeror shall provide a statement which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work described in the statement of work of this solicitation. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of affiliates or other divisions or sections of the proposing entity and how that structure or system would avoid or mitigate an organizational conflict of interest.

(2) The proposing entity shall assure that any consultants and subcontractors,

identified in its proposal, which will perform services similar to those to be performed by the proposer, *i.e.*, evaluation services or activities or technical consulting and management support services submit the same information as required by paragraph (a)(1) of this clause, either as part of the proposing entity's proposal, or directly to DOE prior to the time and date set for receipt of proposals, with identification of the solicitation and the offeror's proposal to which it relates.

(3) The proposing entity shall also assure that each of its chief officers or directors, if any, who will be directly involved in the actual performance of the contract, submit such information.

(4) The proposing entity shall promptly provide to the DOE contracting officer information concerning any changes, including additions, in its relevant facts reported under paragraph (a)(1) of this clause, that occur between the submission of its proposal and the award of the contract or the time that the proposer is notified that it is no longer under consideration for award.

(b) In the absence of any relevant interests referred to above, the offeror or others specified above, shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to the work to be performed.

(c) If the proposing entity has submitted a Securities and Exchange Commission Form 10k to that agency, it shall include a copy of the form and a list of all attachments as part of its business management proposal (or cost proposal if no business management proposal is required).

(d) The contracting officer will review the statement submitted and may require the submission of additional relevant information. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest with respect to the offeror's (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. If such a conflict is found to exist, the Department, at its sole discretion, may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror in face of an organizational conflict after including appropriate conditions mitigating such conflict.

(e) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(f) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(g) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality, and the offeror shall be required to promptly correct the omission.

952.209–71 [Removed and reserved]

16. Section 952.209–71 is removed and reserved.

17. Section 952.209–72 is amended by revising the section heading to read as set forth below; by revising the prescription for use of the clause as set forth below; by revising the title of the clause as set forth below; by amending the subparagraph designators of paragraph (b)(2)(i) of the clause to read "(A)," "(B)," "(C)," and "(D)," respectively; by revising paragraphs (b)(2)(iii), (c), and (d)(1) of the clause to read as follows; and paragraph (g) is amended by replacing the word "significantly" with "meaningfully" and by adding the phrase "in accordance with the instructions of the contracting officer" at the end of the paragraph:

952.209–72 Organizational conflicts of interest.

The contracting officer shall include the following clause in all contracts for evaluation services or activities, technical consulting and management support services, research and development under the authority of the Federal Energy Administration Act, and other appropriate situations in accordance with 909.570–8.

Organizational Conflicts of Interest (Dec. 1994)

* * * * *

(b) * * *

(2) * * *

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the relevant facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts relevant to the performance of this contract and did not disclose such facts to the contracting officer, DOE may terminate this contract for default.

(d) Subcontracts. (1) The contractor shall include this clause, including this paragraph, in contracts of any tier which involve performance of evaluation services or activities, or technical consulting and management support services as those terms are defined at 48 CFR (DEAR) 909.570–3. The terms 'contract,' 'contractor,' and 'contracting officer' shall be appropriately modified to preserve the Government's rights.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

18. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

970.5204–36 [Amended]

19. Section 970.5204–36, Organizational conflicts of interest, is amended by revising the section heading to read "Preventing conflicts of interest in university research" and by revising the title of the clause contained therein to read "Preventing Conflicts of Interest in University Research (DEC 1994)."

[FR Doc. 94–31496 Filed 12–22–94; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870

RIN 2700–AB38

NASA FAR Supplement Directive (NFSD) 89–17; Miscellaneous amendments

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

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as increase of the threshold in the Master Buy Plan, removal of internal reporting requirements, revision of office codes, and division title changes.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482; e-mail: dbeck@proc.hq.nasa.gov.

SUPPLEMENTARY INFORMATION

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Adoption of Interim Rule as Final Rule

NASA is adopting as final rules the text set out as interim rules at 59 FR 38130, July 27, 1994, SBA Appeals (no comments received) and 58 FR 69245, December 30, 1993, Synopsis of Actions Outside the U.S. (no comments received). No changes are made to these interim rules.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870 are amended as follows,

1. The authority citation for 48 CFR Parts 1801, 1803, 1804, 1806, 1807, 1808, 1812, 1815, 1819, 1822, 1825, 1829, 1833, 1835, 1837, 1842, 1844, 1852, 1853, and 1870 continues to read as follows:

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

2. Under the authority of 42 U.S.C. 2473(c)(1), the interim rules published at 59 FR 38130, July 27, 1994, and at 58 FR 69245, December 30, 1993, are adopted as final without change.

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.104–370 [Amended]

3. In section 1801.104–370, paragraph (a), "Grant and Cooperative Agreement Handbook (G&CAHB)" is revised to read "NASA Research Grant Handbook," and "Mrs. Cynthia O'Bryant" is revised to read "Ms. Joan Brooks."

1801.270 [Amended]

4. In section 1801.270, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1801.271 [Amended]

5. In section 1801.271, paragraph (a)(1) "Procurement Policy Division (Code HP)" is revised to read "Acquisition Liaison Division (Code HP)" and paragraph (a)(2) is revised to read as follows:

1801.271 NASA procedures for FAR and NFS changes.

(a) * * *

(2) The Acquisition Liaison Division (Code HP) is responsible for the receipt and formal processing of changes to the NFS. A Code H procurement analyst—a subject matter specialist—is assigned to and responsible for ensuring all necessary actions are taken. It is advisable to contact the appropriate Code H analyst (see the Procurement Information Circular entitled "Headquarters Points of Contact for Policy and Operational Information") to determine if a similar regulatory change is already underway or contact Code HP for further advice as to the simplest means of preparing a formal request.

* * * * *

1801.272–1 [Amended]

6. In section 1801.272–1, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1801.603–2 [Amended]

7. Section 1801.603–2(d)(3) is revised to read as follows:

1801.603–2 Selection.

* * * * *

(d)(1) * * *

(2) * * *

(3) If the appointing authority approves the Request for Appointment of a Contracting Officer, the appointing authority shall issue a Standard Form (SF) 1402, Certificate of Appointment, in accordance with 1801.603–3. A copy of the SF 1402, the Request for Appointment of a Contracting Officer, and the qualification statement shall be maintained for each contracting officer in a central location in the installation's contracting office while the SF 1402 is effective and for three years after its termination or after the individual has left the contracting office's employ. Each installation shall maintain an up-to-date listing, by name and position, of all the installation's contracting officers and the limitations imposed on them in their warrants.

* * * * *

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.104–11 [Amended]

8. In section 1803.104–11, paragraph (b), "Code HM" is revised to read "Code HP."

1803.804 [Amended]

9. In paragraph (a) of section 1803.804, the phrase "The Headquarters Procurement Systems Division (Code HM)" is revised to read "The Headquarters Contract Management Division (Code HK)," and in paragraph (b), "Code HM" is revised to read "Code HK."

PART 1804—ADMINISTRATIVE MATTERS

1804.601 [Amended]

10. In section 1804.601, "The Headquarters Procurement Systems Division (Code HM)" is revised to read "The Headquarters Analysis Division (Code HC)."

1804.602 [Amended]

11. In section 1804.602, "(Code HM)" is revised to read "(Code HC)."

1804.671–4 [Amended]

12. In section 1804.671–4, paragraph (k), "Headquarters Procurement Systems Division (Code HM)" is revised to read "Headquarters Analysis Division (Code HC)," and "NASA Headquarters (Code HM)" is revised to read "NASA Headquarters (Code HC)."

13. In section 1804.671–4, paragraph (zz)(3), "Procurement Management Division (Code HM)" is revised to read "Analysis Division (Code HC)."

1804.7101 [Amended]

14. In paragraph (a) of section 1804.7101, "(Code HM)" is revised to read "(Code HC)."

PART 1806—COMPETITION REQUIREMENTS

1806.303–270 [Amended]

15. In section 1806.303–270, the references "NFS 1803.602, 1803.7001(a), and 1806.304–70" are revised to read "NFS 1803.602 and 1803.7001(a)."

PART 1807—ACQUISITION PLANNING

1807.7102 and 1807.7103–1 [Amended]

16. Sections 1807.7102 and 1807.7103–1 are revised to read as follows:

1807.7102 Applicability.

(a) The Master Buy Plan Procedure applies to each negotiated procurement where dollar value, including the aggregate amount of follow-on procurements, is expected to equal or exceed $50,000,000.

(b) For the purpose of the initial Master Buy Plan submission only, each installation shall submit all procurements over $50,000,000. Each installation shall submit their three largest procurements, so that installations having less than three procurements over $50,000,000 shall submit, as their initial annual Master Buy Plan submission, their three largest procurements regardless of dollar value.

(c) The procedure also applies to:

(1) Any phased procurement whose overall value exceeds $50,000,000, even if the value of the initial phase is below the threshold. (Initial phase for all procurements is considered to be Phase B or its equivalent.)

(2) Any supplemental agreement (except one providing only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if either the new work or an individual change order or the aggregate of two or more actions equals or exceeds $50,000,000.

(3) Any supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, even though the monetary amount under consideration might not equal or exceed $50,000,000.

(d) In order to conduct the reviews required by (FAR) 48 CFR 8.307–1(b) for separate contracts, this procedure applies also to procurement of utility services when an areawide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed $150,000; or

(2) Except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed $75,000.

(e) The Master Buy Plan Procedure does not apply to termination settlement agreements (see (FAR) 48 CFR Part 49).

* * * * *

1807.7103–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Associate Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing in it every known procurement that (1) meets the criteria in 1807.7102, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list those procurements selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans that have not been completed. These procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7106 and shall identify the individual procurement documents involved for every procurement listed. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

1807.7204 [Amended]

17. In paragraph (b) of section 1807.7204, "Code HM" is revised to read "Code HC."

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Part 1808 is amended as set forth below:

1808.405 [Amended]

18. The section heading "1808.405–1 Ordering from multiple-award schedules." is removed, and paragraphs (a) and (b) are redesignated as section 1808.405.

19. In the newly designated paragraph (a) to section 1808.405, the last sentence is removed.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.302 [Amended]

20. In paragraph (a) to section 1812.302, "Headquarters Procurement Policy Division" is revised to read "Headquarters Acquisition Liaison Division."

1812.303–70 [Amended]

21. In paragraph (e) to section 1812.303–70, "The Headquarters Procurement Policy Division" is revised to read "The Headquarters Acquisition Liaison Division."

PART 1815—CONTRACTING BY NEGOTIATION

1815.804–3 [Amended]

22. In section 1815.804–3, paragraphs (a)(4) and (d), "Contract Pricing and Finance Division" is revised to read "Analysis Division."

23. Section 1815.804–3, paragraph (d), in the introductory text to the Determination and Finding, the reference "1815.804–3(c)" is revised to read "1815–804–3(d)."

1815.805–5 [Amended]

24. In paragraph (e) of section 1815.805–5, the word "a" is added between the words "of" and "follow-on" and the reference "1815.505–5" is revised to read "1815.805–5."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1819.708–70 [Amended]

25. In section 1819.708–70, paragraph (b), "(Code HM)" is revised to read "(Code HC)."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.406–13 [Amended]

26. In 1822.406–13, "The Procurement Policy Division" is revised to read "The Acquisition Liaison Division."

1822.807 [Amended]

27. In section 1822.807, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1825—FOREIGN ACQUISITION

1825.7200 [Amended]

28. In section 1825.7200, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1829—TAXES

1829.203 [Amended]

29. In paragraph (a) to section 1829.203, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.103 [Amended]

30. In section 1833.103, paragraph (a) is revised to read as follows:

1833. 103 Protests to the agency.

(a) When a protest is filed directly with an installation, any determination under (FAR) 48 CFR 33.103(a) to award the contract before the protest is resolved will be made by the contracting officer. If the protest is filed with NASA Headquarters, any such determination will be made by the Associate Administrator for Procurement.

* * * * *

31. In paragraph (c) of 1833.103, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.016–70 [Amended]

32. In section 1835.016–70, paragraph (b)(6) is removed.

1837.202–71 [Amended]

33. In paragraph (b) of section 1837.202–71, "(Code HM)" is revised to read "(Code HC)."

PART 1842—CONTRACT ADMINISTRATION

1842.101 [Amended]

34. In section 1842.101, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1842.1004 [Amended]

35. In section 1842.1004, "Contract Pricing and Financing Division" is revised to read "Analysis Division."

1842.1203 [Amended]

36. In paragraph (a) introductory text of section 1842.1203, "Director, Procurement Systems Division (Code HM)" is revised to read "Director, Analysis Division (Code HC)."

37. In paragraph (c)(1) of section 1842.1203, "Code HM" is revised to read "Code HC."

1842.1203–70 [Amended]

38. In section 1842.1203–70, paragraph (c), "Code HM" is revised to read "Code HC."

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.305 [Amended]

39. In section 1844.305, "Code HM" is revised to read "Code HK."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

1852.103–70 Identification of modified provisions and clauses.

* * * * *

52.232–28 Electronic Funds Transfer Payment Methods (APR 1989)—as modified by 48 CFR 1832.908(a) (NASA FAR Supplement 1832.908(a))

1852.204–70 [Amended]

41. In the clause of section 1852.204–70, paragraphs (a) introductory text, (b) and (e)(2), "(Code HM)" is revised to read "(Code HC)."

PART 1853–FORMS

1853.103 [Amended]

42. In section 1853.103, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

1853.108 [Amended]

43. In section 1853.108, "Procurement Policy Division" is revised to read "Acquisition Liaison Division."

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.103 [Amended]

44. In section 1870.103, App. I, Chapter 7, Appendix B, paragraph XI, subparagraph 2., the phrase "and the clause at NFS 1852.227–73, 'Patent Rights Clause for Subcontracts,'" is removed.

45. In section 1870.303, App. I, Chapter 1, paragraph 101, subparagraphs 4.i. and 4.j. are revised to read as follows:

1870.303 Source Evaluation Board Procedures.

* * * * *

4. i. Establish an SEB advisory group or individual at the field installation to ensure proper source selection procedures are employed;

j. Ensure an environment exists in which evaluation and selection activities can be effectively conducted; and

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 646

[Docket No. 940953–4347; I.D. 081594A]

RIN 0648–AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule changes the minimum size limits of certain species, requires charter vessels/headboats and dealers to obtain Federal permits, clarifies one of the earned income requirements for a vessel permit, restricts the sale/purchase of snapper-grouper species, modifies the criteria for determining when a vessel is operating as a headboat, modifies the requirements for possessing multi-day bag limits, specifies allowable gear, authorizes permits for experimental fishing, modifies the management unit for scup, clarifies the management unit for sea bass, and corrects and clarifies the regulations. The intended effects of this rule are to conserve snapper-grouper species and enhance effective management of the snapper-grouper fishery. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of three new collection-of-information requirements contained in this rule.

EFFECTIVE DATE: January 23, 1995, except that §§ 646.4 (d) and (e), (f) and (g), and 646.7(e) are effective December 23, 1994; and §§ 646.4 (a)(3) and (a)(4), 646.7 (c), (d), and (mm), and 646.26(a) are effective March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic States are managed under the

FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The background and rationale for the measures in Amendment 7 and the additional measures proposed by NMFS were contained in the preamble to the proposed rule (59 FR 47833, September 19, 1994) and are not repeated here.

Comments and Responses

Comments on the proposed rule were received from a commercial dive fisherman, the U.S. Fish and Wildlife Service, the Council, and the operator of a charter vessel.

Comment: The U.S. Fish and Wildlife Service supported the proposed management measures in Amendment 7.

Response: NMFS agrees.

Comment: The Council reiterated its desire for the prohibition on use of powerheads in the EEZ off South Carolina and for the prohibition on bottom longlines south of St. Lucie Inlet. This was done by copying appropriate sections of Amendment 7 and resubmitting them.

Response: NMFS agrees.

Comment: The charter vessel operator commented that it is unfair to allow an excursion vessel to possess a 3-day bag limit of snappers and groupers when charter vessels are restricted to a 2-day bag limit.

Response: This management measure was contained in Amendment 4, not Amendment 7, and therefore is outside the scope of this rulemaking. The commenter's letter has been forwarded to the Council for consideration.

Comment: The commercial diver opposed the prohibition on use of powerheads in the EEZ off South Carolina. He commented that the South Carolina law banning the use of powerheads in State waters is unconstitutional because it limits interstate commerce and would not allow a fisherman to ship powerheaded fish through South Carolina. The commenter asked why enforcement of powerheading restrictions is a major problem with only 17 vessels using dive gear in that State. He asked why the Council has not prohibited sea bass trappings, because hundreds of vessels are engaged in that activity, which is also banned in special management zones (SMZs). He stated that if enforcement of the law on SMZs warrants prohibition of powerheads, it should warrant the prohibition of sea bass traps. He reported that South Carolina would like to make the entire EEZ off its border an SMZ, which would be unacceptable. He concluded by stating that no provisions have been made for transit of the EEZ off South Carolina with fish taken legally in other waters and that he would be unable to fish in Georgia and travel to North Carolina.

Response: After reviewing the administrative record supporting the powerhead prohibition measure, NMFS believes that this measure is necessary to avoid serious user group conflicts in Federal waters off South Carolina. Additionally, the Council believes that South Carolina will be unable to enforce its prohibition on the use of powerheads and the prohibition on the use of powerheads in the SMZs off South Carolina unless powerheads are banned throughout the entire EEZ off South Carolina. This measure will result in consistent Federal and State regulations in the EEZ off South Carolina, which should enhance compliance with management measures. Also, fishermen may continue to use traditional spearfishing gear without powerheads. Fishermen will still be able to use powerheads for safety purposes. Although it is true that fishermen will not be able to transit the EEZ off South Carolina with mutiliated fish and a powerhead, there are no impediments to shipping fish through the State of South Carolina. Fishermen that catch fish with powerheads in the EEZ outside of South Carolina must land them in a state where the practice is legal. Since there is relatively little powerheading activity off South Carolina, few fishermen will be affected by this aspect of the measure. The Council believes that there is an increasing problem of competition between recreational and commercial fishermen using dive gear. This measure will reduce the possibility of conflict between these user groups. Sea bass potting has been a traditional fishing practice off South Carolina. The Council and NMFS do not believe that it is a law enforcement problem. Thus, it is not necessary to prohibit the use of sea bass pots in the EEZ.

Changes From the Proposed Rule

This final rule clarifies that management of bank, rock, and black sea bass under the FMP and the regulations in part 646 applies only south of Cape Hatteras, North Carolina. This geographical limitation on the management of sea bass is contained in the FMP and is based on the fact that Cape Hatteras is the boundary between two distinct stocks of sea bass. The limitation as to black sea bass was discussed in the preamble to the proposed rule to implement the FMP (48 FR 26843, June 10, 1983) and is reflected in the regulations by limitation of the minimum size limit to "black sea bass south of Cape Hatteras, North Carolina * * *" (50 CFR 646.21(a)(1)(i)). As with scup, this geographical limitation of the management unit allows the Mid-Atlantic Fishery Management Council to manage the northern stock of sea bass throughout its range.

In lieu of amending the prohibitions in § 646.7 via complex instructions involving redesignation of current paragraphs, this final rule publishes the entire section, even though a majority of the paragraphs are not substantively changed.

The table in 50 CFR part 204 containing OMB control numbers for NOAA collection-of-information requirements is amended by adding the collection-of-information control numbers issued by the Office of Management and Budget (OMB), under provisions of the Paperwork Reduction Act (PRA), for the new collections contained in this rule.

Effective Dates

This final rule requires the owners/operators of charter vessels/headboats and dealers to obtain permits for the snapper-grouper fishery. In order to allow sufficient time for them to obtain and submit applications for permits and for NMFS to process such applications and issue permits, the measures and prohibitions regarding activities that may be conducted only with such permits, §§ 646.4 (a)(3) and (a)(4), 646.7 (c), (d), and (mm), and 646.26(a), do not become effective until March 1, 1995.

In order for permits to be issued by March 1, 1995, it is essential that the application and permitting process begin as soon as possible. To accomplish this, §§ 646.4 (d), (e), (f), and (g), which set forth procedures for making applications for such permits including the specification of what information is required and other related permit process matters, and § 646.7(e), which prohibits falsification of any information on a permit application, are effective December 23, 1994. To the extent that any of these provisions are substantive rather than procedural, the Assistant Administrator for Fisheries, NOAA, finds that, because a delay in the effectiveness of these provisions would not be in the public interest, good cause exists under section 553(d)(3) of the Administrative Procedure Act not to delay their effective date.

All other measures and related prohibitions are effective January 23, 1995.

Classification

The Regional Director determined that Amendment 7 is necessary for the conservation and management of the snapper-grouper fishery off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the proposed rule was published that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (59 FR 47833, September 19, 1994). As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the PRA—namely, applications for charter vessel/headboat permits, applications for dealer permits, and applications for experimental fishing permits. These collections of information have been approved by OMB under OMB control number 0648–0205. The public reporting burdens for these collections of information are estimated to average 20 minutes, 5 minutes, and 1 hour per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204 and 646 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by adding in the first column "§ 646.29" and adding in the corresponding position in the second column "–0205".

PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

1. The title of part 646 is revised to read as set out above.

2. The authority citation for part 646 continues to read as follows:

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

3. Section 646.1 is revised to read as follows:

§ 646.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the EEZ off the southern Atlantic states, except that—

(1) Sections 646.5 and 646.24 also apply to such fish in or from adjoining state waters; and

(2) This part does not apply to bank, rock, or black sea bass or scup north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

(c) "EEZ" in this part refers to the EEZ off the southern Atlantic states, unless the context clearly indicates otherwise.

4. In § 646.2, the definition of "South Atlantic" is removed; the definitions of "Charter vessel", "Headboat", and "Regional Director" are revised; and new definitions of "Off North Carolina", "Off South Carolina", and "Off the southern Atlantic states" are added, in alphabetical order, to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection.

Off North Carolina means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters off the east coast from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off the southern Atlantic states means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

5. In § 646.4, paragraphs (e) through (m) are redesignated as paragraphs (f) through (n), respectively; paragraphs (a)(3), (b)(2)(vii)(B), (b)(2)(vii)(C), (d), the first sentences of newly designated paragraphs (f), (g)(1), (i)(1), and (i)(2), newly designated paragraph (j), and the first sentence of newly redesignated paragraph (n) are revised; and new paragraphs (a)(4), (a)(5), and (e) are added to read as follows:

§ 646.4 Permits and fees.

(a) * * *

(3) *Annual charter vessel/headboat permits for snapper-grouper.* A vessel that is operating as a charter vessel or headboat that fishes for fish in the snapper-grouper fishery in the EEZ, or possesses fish in the snapper-grouper fishery in or from the EEZ, must have on board a charter vessel/headboat permit for the snapper-grouper fishery.

(4) *Annual dealer permits for snapper-grouper, excluding wreckfish.* A dealer who receives fish in the snapper-grouper fishery, excluding wreckfish, that were harvested in the EEZ must obtain an annual dealer permit for snapper-grouper, excluding wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(5) *Annual dealer permits for wreckfish.* A dealer who receives a wreckfish must obtain an annual dealer permit for wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(b) * * *

(2) * * *

(vii) * * *

(B) Gross sales of fish harvested by his or her vessels were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish harvested by the corporation's or partnership's vessels were more than $20,000;

* * * * *

(d) *Application for a charter vessel/headboat permit for snapper-grouper.* (1) An application for a charter vessel/headboat permit for fish in the snapper-grouper fishery must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address, including zip code, and telephone number of the owner of the vessel.

(iv) Name, mailing address, including zip code, and telephone number of the applicant, if other than the owner.

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation/partnership, the employer identification number, if one has been assigned by the Internal Revenue Service, and the date the corporation/partnership was formed).

(vi) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director and included on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(e) *Application for an annual dealer permit.* (1) An application for a dealer permit for snapper-grouper, excluding wreckfish, or for a dealer permit for wreckfish must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; telephone number; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(f) * * * A fee is charged for each permit application submitted pursuant to this section and for each sea bass pot identification tag required under § 646.6(d). * * *

(g) * * *

(1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. * * *

* * * * *

(i) * * * (1) A vessel permit issued pursuant to this section is not transferable or assignable. * * *

(2) A dealer permit issued pursuant to this section may be transferred upon sale of the dealer's business. * * *

(j) *Display.* A vessel permit issued pursuant to this section must be carried on board the vessel and such vessel must be identified as provided for in § 646.6. A dealer permit issued pursuant to this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon request of an authorized officer.

* * * * *

(n) * * * The owner or operator of a vessel with a permit for snapper-grouper, excluding wreckfish; the wreckfish shareholder of a vessel with a permit for wreckfish; the owner or operator of a vessel with a charter vessel/headboat permit for snapper-grouper; or a dealer with a permit issued pursuant to this section must notify the Regional Director within 15 days after any change in the application information required by paragraph (b), (c), (d), or (e) of this section. * * *

§ 646.5 [Amended]

6. In § 646.5, in paragraphs (b) and (c)(1), the phrase "off the South Atlantic states" is removed.

7. Section 646.7 is revised to read as follows:

§ 646.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in a directed fishery for tilefish in the EEZ or use a sea bass pot in the EEZ north of Cape Canaveral, Florida, aboard a vessel that does not have a vessel permit for snapper-grouper, excluding wreckfish, as specified in § 646.4(a)(1).

(b) Fish for wreckfish in the EEZ, possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ aboard a vessel that does not have a vessel permit for wreckfish, as specified in § 646.4(a)(2).

(c) Own or operate a vessel that operates as a charter vessel or headboat that fishes for snapper-grouper species in the EEZ, or possesses snapper-grouper species in or from the EEZ, without a charter vessel/headboat permit on board, as specified in § 646.4(a)(3).

(d) As a dealer, receive fish in the snapper-grouper fishery without a dealer permit, as specified in § 646.4(a)(4) or (5).

(e) Falsify information specified in § 646.4 (b)(2), (c)(2), (d)(2), or (e)(2) on an application for a permit.

(f) Fail to display a permit, as specified in § 646.4(j).

(g) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d), or as may be required by § 646.29.

(h) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(i) Fail to make available records of off-loadings, purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2); or fail to make available individual transferable quota (ITQ) coupons, as specified in § 646.10(c)(8).

(j) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6 (a) through (e).

(k) Possess an ITQ coupon not issued to him or, if received by transfer, without all required sale endorsements properly completed thereon, as specified in § 646.10(c)(3).

(l) Possess wreckfish on board a fishing vessel in an amount exceeding the total of the ITQ coupons on board the vessel, or without a vessel permit, or without a logbook form for recording the fishing trip, as specified in § 646.10(c)(4).

(m) Fail to sign and date the "Fisherman" part of ITQ coupons or fail to submit such coupon parts with the record of the fishing trip, as specified in § 646.10(c)(5).

(n) Fail to give a dealer the "Fish House" part of ITQ coupons, or transfer a wreckfish to a dealer who does not hold a permit, as specified in § 646.10(c)(6).

(o) Receive a wreckfish from a vessel that does not have a vessel permit for wreckfish, as specified in § 646.10(c)(7).

(p) Fail to receive the "Fish House" part of ITQ coupons from a fisherman; fail to enter the permit number of the vessel from which the wreckfish were received, the date of receipt, and the dealer's permit number on such parts; fail to sign such parts; or fail to submit such parts with the dealer report; as specified in § 646.10(c)(7).

(q) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(r) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(s) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(t) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 646.21(c) and 646.23(e).

(u) Transfer wreckfish at sea, as specified in § 646.21(d)(1).

(v) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21(d)(3) and (4).

(w) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(x) During the wreckfish spawning season closure, harvest, possess, off-load, sell, purchase, trade, or barter wreckfish in or from the EEZ, or attempt any of the foregoing, as specified in § 646.21(g).

(y) During the greater amberjack and mutton snapper spawning seasons, exceed the possession limits for those species, as specified in § 646.21 (h) and (i).

(z) Possess a warsaw grouper or speckled hind in excess of the vessel trip limit, as specified in § 646.21(j) (1) or (2).

(aa) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, a warsaw grouper or speckled hind, as specified in § 646.21(j)(3).

(bb) [Reserved]

(cc) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(dd) Use a fish trap in the EEZ, or use a sea bass pot in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22(b) and (c)(1).

(ee) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass pot that does not conform to the requirements for openings and degradable fasteners specified in § 646.22(c)(2)(i).

(ff) Use or possess in the EEZ north of Cape Canaveral, Florida, sea bass pots in a multiple configuration, as specified in § 646.22(c)(2)(ii).

(gg) Pull or tend another person's sea bass pot, except as specified in § 646.22(c)(2)(iii).

(hh) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board; as specified in § 646.22(d)(1)(i).

(ii) Aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d)(1)(ii).

(jj) Fish for wreckfish with a bottom longline, or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(d)(2).

(kk) In the EEZ off South Carolina, harvest fish in the snapper-grouper fishery with a powerhead, as specified in § 646.22(e).

(ll) Harvest fish in the snapper-grouper fishery with spearfishing gear while using a rebreather, as specified in § 646.22(f).

(mm) Use unauthorized gear in a directed fishery for snapper-grouper or exceed the possession limits for snapper-grouper species when unauthorized gear is aboard, as specified in § 646.22(g)(2)(i) and (ii).

(nn) Transfer at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(g)(2)(iii) and (iv).

(oo) Exceed the bag and possession limits, as specified in § 646.23(a) through (c).

(pp) Transfer at sea—

(i) Warsaw grouper or speckled hind, as specified in § 646.21(j)(6);

(ii) Fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f); or

(iii) Snowy grouper or golden tilefish, as specified in § 646.25(e).

(qq) Exceed a commercial trip limit for snowy grouper or golden tilefish, as specified in § 646.25(a) or (b).

(rr) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, snowy grouper or golden tilefish in excess of an applicable trip limit, as specified in § 646.25(f).

(ss) Sell, trade, or barter or attempt to sell, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ to a dealer who does not have a permit, as specified in § 646.26(a).

(tt) Purchase, trade, or barter or attempt to purchase, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ unless the harvesting vessel has a permit for snapper-grouper, excluding wreckfish, or the seller has a commercial license to sell fish, as specified in § 646.26(b).

(uu) Except for snapper-grouper species harvested by a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snapper-

grouper species, excluding wreckfish, harvested in the EEZ in excess of the bag limits, as specified in § 646.26(c).

(vv) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.27(b) and (c).

(ww) Fish for fish in the snapper-grouper fishery in the Oculina Bank habitat area of particular concern (HAPC), retain such fish in or from the Oculina Bank HAPC, or fail to release immediately such fish taken in the Oculina Bank HAPC by hook-and-line gear, as specified in § 646.27(d)(2).

(xx) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a fish in the snapper-grouper fishery.

(yy) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

8. In § 646.21, paragraphs (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) are redesignated as paragraphs (a)(1)(v), (a)(1)(vii), and (a)(1)(viii), respectively; paragraphs (a)(1)(i) and (a)(1)(iii) are revised; and new paragraphs (a)(1)(iv) and (a)(1)(vi) are added to read as follows:

§ 646.21 Harvest limitations.

(a) * * *

(1) * * *

(i) Black sea bass—8 inches (20.3 cm), total length.

* * * * *

(iii) Blackfin, cubera, dog, gray, mahogany, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 cm), total length.

(iv) Hogfish—12 inches (30.5 cm), fork length.

* * * * *

(vi) Mutton snapper—16 inches (40.6 cm), total length.

* * * * *

9. In § 646.22, paragraphs (d), (e), and (f) are removed; paragraph (g) is redesignated as paragraph (d); in newly designated paragraph (d)(1)(iii), the reference to "paragraph (g)(1)" is revised to read "paragraph (d)(1)(ii)"; newly designated paragraphs (d)(1)(i) and (d)(1)(ii) introductory text are revised; and new paragraphs (e), (f), (g), and (h) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(d) * * *

(1) * * *

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) South of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL);

(B) North of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location; or

(C) Without a permit for snapper-grouper, excluding wreckfish, on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a permit for snapper-grouper, excluding wreckfish, on board, is limited on that trip to:

* * * * *

(e) *Powerheads off South Carolina.* In the EEZ off South Carolina, a powerhead may not be used to harvest fish in the snapper-grouper fishery. The possession of a mutilated fish in the snapper-grouper fishery in or from the EEZ off South Carolina and a powerhead is prima facie evidence that such fish was harvested by a powerhead.

(f) *Rebreathers and spearfishing gear.* In the EEZ, a person using a rebreather may not harvest fish in the snapper-grouper fishery with spearfishing gear. The possession of a fish in the snapper-grouper fishery while in the water with a rebreather is prima facie evidence that such fish was harvested with spearfishing gear while using a rebreather.

(g) *Authorized and unauthorized gear*—(1) *Authorized gear.* Subject to the specific gear limitations in paragraphs (a) through (f) of this section and in § 646.26, the following are the only gear types authorized in a directed fishery for snapper-grouper in the EEZ:

(i) Vertical hook-and-line gear, including hand-held rods and rods attached to a vessel ("bandit" gear), in either case, with manual, electric, or hydraulic reels;

(ii) Spearfishing gear;

(iii) Bottom longlines; and

(iv) Sea bass pots.

(2) *Unauthorized gear.* All gear types other than those listed in paragraph (g)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear aboard that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, aboard harvested such fish in the EEZ.

(ii) Except as specified in paragraph (h) of this section, a person aboard a vessel with unauthorized gear aboard, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) A vessel with unauthorized gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(A) Taken in the EEZ, regardless of where the transfer takes place; or

(B) In the EEZ, regardless of where such fish were taken.

(iv) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard, as specified in paragraph (g)(2)(iii) of this section.

(h) *Use of sink nets off North Carolina.* A vessel that has on board a permit for snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net aboard, may retain otherwise legal fish in the snapper-grouper fishery taken on that trip with vertical hook-and-line gear or sea bass pots. For the purpose of this paragraph (h), a sink net—

(1) Is a flat net, designed to be suspended vertically in the water to entangle the head or body parts of fish that attempt to pass through the meshes;

(2) Has stretched mesh measurements of 3 to 4¾ inches (7.6 to 12.1 cm); and

(3) Is attached to the vessel when deployed.

10. In § 646.23, paragraphs (a)(2) and (a)(3) are removed; paragraph (a)(4) is redesignated as paragraph (a)(3); new paragraph (a)(2) is added; and paragraph (c)(2) introductory text is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(2) Special limitations on possession and transfer of fish in the snapper-grouper fishery apply to a person fishing with unauthorized gear in the EEZ. See § 646.22(g)(2).

* * * * *

(c) * * *

(2) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

* * * * *

§§ 646.26 through 646.28 [Redesignated as §§ 646.27 through 646.29]

11. Sections 646.26, 646.27, and 646.28 are redesignated as §§ 646.27, 646.28, and 646.29, respectively.

12. In subpart B, new § 646.26 is added to read as follows:

§ 646.26 Restrictions on sale/purchase.

Subject to the restrictions regarding sale/purchase of fish in the snapper-grouper fishery in §§ 646.21(a)(2), (g), and (j)(3); and 646.25(f)—

(a) A person may sell, trade, or barter or attempt to sell, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only to a dealer who has a valid permit for snapper-grouper, excluding wreckfish;

(b) A person may purchase, trade, or barter or attempt to purchase, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only from a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued or from a person who has a valid commercial license to sell fish in the state where the purchase, trade, or barter or attempted purchase, trade, or barter occurs.

(c) Except for the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ by a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of such fish is limited to the bag limits specified in § 646.23(b).

§ 646.28 [Amended]

13. In newly designated § 646.28, the word "Region" is added after the words "South Atlantic" and before the comma.

14. Newly designated § 646.29 is revised to read as follows:

§ 646.29 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part. In addition, the Regional Director may issue a permit for experimental fishing, provided that, as a condition of such permit, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director.

[FR Doc. 94–31421 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 642

[Docket No. 940710–4293; I.D. 121994B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: December 20, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook and line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone was reached on December 19, 1994. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 a.m., local time, December 20, 1994, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) the Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48′ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994 (59 FR 49356, September 28, 1994). Consequently, with this closure the only commercial king mackerel fishery remaining open in the Gulf of Mexico EEZ is the fishery in the Florida west coast sub-zone by vessels permitted to use run-around gillnets.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from review under E.O. 12866.

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

Dated: December 19, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–31514 Filed 12–19–94; 4:24 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 121994C]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the offshore component in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), December 20, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by

regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the BS was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 799,662 metric tons (mt).

The Director of the Alaska Region, NMFS, (Regional Director), determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for vessels catching pollock for the offshore component in the BS soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 799,562 mt after determining that 100 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the BS effective from 12 noon, A.l.t., December 20, 1994, until 12 midnight, A.l.t., December 31, 1994. Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: December 20, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–31610 Filed 12–20–94; 2:15 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 246
Friday, December 23, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-95-07]

Milk in the Iowa Marketing Area; Termination of Proceeding on Proposed Revision of Pool Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed revision of rules.

SUMMARY: This action terminates the proceeding that was initiated to consider a proposal to increase the pool supply plant shipping percentage of the Iowa milk order. The revision was requested by Anderson-Erickson Dairy Company of Des Moines, Iowa, a proprietary distributing plant that is regulated under the order, because the handler believed that it would have difficulty obtaining an adequate supply of milk for fluid use. According to Anderson-Erickson, a supply of milk has been made available, and the proposed revision will be unnecessary. Accordingly, this proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090-6456.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision: Issued November 21, 1994; published November 23, 1994 (59 FR 60335).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on November 23, 1994 (59 FR 60335), concerning a proposed revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area. The proposal would have increased the pool supply plant shipping percentage of the order pursuant to § 1079.7(b)(1). Interested parties were invited to comment on the proposal in writing by November 30, 1994. Two comments were received.

Statement of Consideration

Comments were submitted by Anderson-Erickson Dairy (A-E), the fluid milk distributing plant operator who requested the proposed increase in the pool supply plant shipping percentage for the months of December 1994 through March 1995. According to the comments, a committed supply of milk for the proposed period was obtained after the proposed revision was issued. A-E, therefore, considers there to be no need to revise the pool supply plant shipping percentage from 20 percent to 30 percent of receipts for the proposed period. Swiss Valley Farms, Co., a cooperative association that is a milk handler under the Iowa order, submitted comments that favored the proposed revision, with no reason given for supporting it.

In view of the fact that an adequate supply of milk appears to have been obtained by Anderson-Erickson Dairy, there is no reason to proceed with A-E's request to revise the pool supply plant shipping percentage for Order 79, and, therefore, the proceeding is terminated.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: December 19, 1994.

Richard M. McKee,

Director Dairy Division.

[FR Doc. 94-31609 Filed 12-22-94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-40)

Proposed Modification of Class E Airspace; Harrison, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM), which proposed to revise the hours of operation of the Class E airspace at Harrison, AR. The proposal was to increase the hours of operation of controlled airspace to a continuous (24 hours) basis. Class E airspace currently exists at Harrison, AR, and the hours are published in the Airport/Facility Directory. The change in hours of the Class E airspace to a full time basis does not require rulemaking action, therefore the proposal is withdrawn.

DATES: This withdrawal is effective on publication.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193-0530; telephone: (817) 222-5593.

SUPPLEMENTARY INFORMATION: On December 28, 1993, a NPRM was published in the **Federal Register** to modify the Class E airspace at Harrison, AR. The intended effect of the proposal was to increase the hours of operation of the Class E airspace to a continuous (24 hours) basis. The operating hours of the Class E airspace at Harrison, AR, are published in the Airport/Facility Directory. The change in operating hours of the Class E airspace at Harrison, AR, does not require rulemaking action, making the proposal unnecessary. Accordingly, the proposed rule is withdrawn. The modified hours will be reflected in the Airport/Facility Directory.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace

Docket No. 93–ASW–40, as published in the **Federal Register** on December 28, 1993 (58 FR 68577), is withdrawn.

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

Issued in Fort Worth, TX on December 6, 1994.

James R. Nausley,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–31588 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–31]

Modification of Class D Airspace; Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D airspace area at Cleveland, Burke Lakefront, OH by adjusting the lower vertical limits of the Class D area up to but not including the base altitude of the overlying Class B airspace area. The intent of this action is to eliminate confusion to pilots by appropriately identifying controlled airspace areas at Cleveland, Burke Lakefront, OH.

DATES: Comments must be received on or before February 1, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D airspace at Cleveland, Burke Lakefront Airport, OH.

Subsequent to and associated with airspace reclassification, effective September 16, 1993, new guidelines have been established for depicting Class D airspace areas that underlie Class B airspace areas. The base altitude of the higher class airspace, in this case Class B airspace, supersedes the vertical limits of the Class D airspace area. Therefore, this action adjusts the lower vertical limits of the Class D area up to but not including the base of the overlying Class B airspace area. The intent of this action is to eliminate confusion to pilots by appropriately identifying the controlled airspace areas at Cleveland, Burke Lakefront Airport, OH.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace

Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

AGL OH D Cleveland, Burke Lakefront Airport, OH [Revised]

(Lat. 41°31'03" N., long. 81°41'00" W.)

That airspace extending upward from the surface to but not including 3000 feet MSL within a 4.1-mile radius of Burke Lakefront Airport, excluding that airspace within the Cleveland, OH, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois, on December 13, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–31591 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–993–71]

RIN 1545–AB21

Controlling Corporation's Basis Adjustment in Its Controlled Corporation's Stock Following a Triangular Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document withdraws proposed regulations published on January 2, 1981 at 46 FR 113 and 114, and contains proposed regulations under sections 358, 1032, and 1502 of the Internal Revenue Code of 1986. The proposed regulations provide rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation. The proposed regulations also generally provide that the use of the controlling corporation's stock provided by the controlling corporation pursuant to the plan of reorganization is treated as a disposition of those shares by the controlling corporation. The proposed regulations affect corporations that are parties to such triangular reorganizations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for March 31, 1995, at 10:00 a.m., must be received by March 10, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–993–71), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO:993–71), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. The hearing will be held in the IRS auditorium, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose L. Williams, (202) 622–7550; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 358, 1032, and 1502. The proposed regulations provide rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation. The proposed regulations also generally provide that the use of the controlling corporation's stock provided by the controlling corporation pursuant to the plan of reorganization is treated as a disposition of those shares by the controlling corporation.

Explanation of Proposed Regulations

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment in three-party reorganizations. A three-party reorganization can be structured as a reorganization in which (1) a parent corporation (P) acquires the assets or stock of a target corporation (T) in exchange for P stock and then transfers the acquired assets or stock to a subsidiary corporation (S) (a parent/drop reorganization), or (2) S acquires the assets or stock of T, or S merges into T, in a transaction in which the T shareholders receive P stock in exchange for their T stock (a triangular reorganization).

A. Development of Statutory Provisions

Prior to 1954, gain or loss generally was recognized in three-party reorganizations because of the remote continuity of interest doctrine enunciated in *Groman* v. *Commissioner*, 302 U.S. 82 (1937), and *Helvering* v. *Bashford*, 302 U.S. 454 (1938).

In 1954, Congress restricted the application of the remote continuity of interest doctrine in certain three-party reorganizations by enacting section 368(a)(2)(C) and amending the predecessor to section 368(a)(1)(C) (section 112(g)(1)(C) of the Internal Revenue Code of 1939). Section 368(a)(2)(C) provides that P's transfer of T assets acquired in a reorganization under section 368(a)(1)(A) (merger or consolidation) or 368(a)(1)(C) (asset acquisition) to S does not disqualify the reorganization. Section 368(a)(1)(C) provides that S can acquire T assets directly in exchange for P stock (a triangular C reorganization).

In 1964, Congress further limited the scope of the remote continuity of interest doctrine by amending section 368(a)(2)(C) to provide that P can transfer T stock acquired in a reorganization under section 368(a)(1)(B) (stock acquisition) to S without disqualifying the reorganization. Section 368(a)(1)(B) was also amended to provide that S can acquire T stock directly in exchange for P stock (a triangular B reorganization).

In 1968, Congress enacted section 368(a)(2)(D) to provide that a transaction is not disqualified under sections 368 (a)(1)(A) or (a)(1)(G) when S acquires substantially all of the T assets with the shareholders of T receiving P stock in exchange for their T stock (a forward triangular merger).

In 1971, Congress enacted section 368(a)(2)(E) to provide that a transaction otherwise qualifying under paragraph (a)(1)(A) is not disqualified when S merges into T with the shareholders of T receiving P stock in exchange for their T stock (a reverse triangular merger).

B. Failure of Statutory Amendments To Deal With Certain Effects of Triangular Reorganizations

Although Congress has increased the number of three-party reorganizations that qualify for general nonrecognition treatment, it has not provided explicit statutory rules concerning certain effects of those reorganizations. For example, Congress has not provided rules regarding the adjustments, if any, to be made to P's basis in its S or T stock, as applicable, following a triangular reorganization. Also, Congress has not explicitly provided that S does not

recognize gain on its exchange of P stock for T assets or stock in a triangular reorganization. These issues do not arise in a parent/drop reorganization because section 358 applies to determine P's basis in S stock on P's transfer of T's assets or stock to S, and section 1032 applies to P's exchange of its own stock for T assets or stock.

C. 1981 Proposed Regulations

In 1981, regulations were proposed under sections 358 and 1032 that generally would have conformed certain tax consequences of a triangular reorganization with the consequences of its counterpart parent/drop reorganization. To achieve this conformity, the 1981 proposed regulations employed mechanical rules that generally simulated the basis effects that would have resulted if P had acquired the T assets or stock directly and then transferred the assets or stock to S (sometimes referred to as an over-the-top model). Also, under the 1981 proposed regulations, S did not recognize any gain or loss on its use of P stock in a forward triangular merger or a triangular B or C reorganization.

Comments received on the 1981 proposed regulations generally agreed with the over-the-top model for basis determinations in triangular reorganizations.

D. Justification of the Over-The-Top Model

Adoption of the over-the-top model is appropriate for triangular reorganizations. First, the basis results in a parent/drop reorganization are clearly defined by the Code. The paired enactment pattern of legislation involving section 368 evidences Congressional intent that the basis results in a triangular reorganization should conform to the basis results in its counterpart parent/drop reorganization. The exceptions to this pattern were the provisions dealing with the forward triangular merger and the reverse triangular merger. However, Congress recognized that even the forward triangular merger and the reverse triangular merger had counterparts. See S. Rep. No. 1563, 90th Cong., 2d Sess. 2 (1968) (a forward triangular merger is like a section 368(a)(1)(A) merger with a subsequent transfer of assets under section 368(a)(2)(C)); S. Rep. No. 1533, 91st Cong., 2d Sess. 2 (1970) (a reverse triangular merger should be afforded similar treatment to a forward triangular merger). Achieving comparability between a triangular reorganization and its counterpart parent/drop reorganization furthers sound tax policy by treating economically comparable reorganizations similarly.

Second, S stock owned by P can be viewed as a surrogate for the T assets or stock acquired by S in the reorganization. Section 362(b) requires that the acquiring corporation take a transferred basis in the assets or stock acquired. Although section 362(b) does not literally apply to P as a party to a triangular reorganization (because T assets or stock are not actually acquired by P), the S stock can be viewed as a surrogate for the assets or stock acquired by S. Thus, the principles of section 362(b) should govern the adjustment to P's basis in its S stock. Consequently, a triangular reorganization should result in an adjustment to P's basis in its S stock reflecting the basis in the T assets or stock acquired by S. Furthermore, by treating the S stock as a surrogate for the T assets or stock acquired by S, the over-the-top model achieves neutrality for P between a sale of the S stock and a sale by S of the assets or stock acquired in the reorganization.

E. The New Proposed Regulations

1. Retention of the Over-The-Top Model

This document withdraws the proposed regulations published on January 2, 1981 at 46 FR 113 and 114. It proposes new regulations under sections 358 and 1502 that generally employ an over-the-top model for determining P's basis adjustment in S or T stock as a result of certain triangular reorganizations. It also proposes new regulations under section 1032 that provide that the use of P stock provided by P to S pursuant to the plan of reorganization is treated as a disposition of those shares by P. Consequently, neither P nor S has taxable gain or deductible loss on the exchange.

In contrast to the mechanical rules employed in the 1981 proposed regulations, the new proposed regulations set forth general rules for adjusting basis. For example, the new proposed regulations provide that P's basis in its S stock immediately after a forward triangular merger described in sections 368 (a)(1)(A) and (a)(2)(D) is adjusted (with certain modifications described below) as if P acquired the T assets (and any liabilities assumed or to which the T assets were subject) directly from T in a transaction in which P's basis in the T assets was determined under section 362(b), and P then transferred the T assets (and liabilities) to S in a transaction in which P's basis in the S stock was adjusted under section 358. Despite the change in format from mechanical rules to general rules, the new proposed regulations and the 1981 proposed regulations should produce similar tax effects, with limited differences that are noted in the discussion below.

The over-the-top model is not intended to construct a transfer of T assets or stock from P to S for any purpose of the Code except the determination of P's basis in its S or T stock. Thus, for example, section 357(c) does not apply if T's liabilities exceed T's aggregate asset basis (even though it would apply in a parent/drop reorganization). Furthermore, section 1001 applies if S exchanges its assets for T's assets or stock (even though in a parent/drop reorganization, S's consideration would have to be distributed to P with the consequences determined under sections 301 and 311).

2. Specific Issues

(a) *Decrease for consideration not provided by P.* The 1981 proposed regulations generally would have required P to reduce its basis in its S or T stock by the fair market value of the consideration not provided by P in the reorganization. New proposed § 1.358–6(d) similarly requires a reduction in P's basis in its S or T stock by the fair market value of consideration not provided by P (including any P stock not provided by P pursuant to the plan of reorganization).

(b) *Decreases under the model and negative basis.* A strict application of the over-the-top model would require P to adjust its historic basis in its S stock, if any, even below zero. For example, the model relies in part on section 358 which requires a reduction in basis for the amount of liabilities assumed or to which the T assets are subject. If the amount of liabilities assumed exceeds the basis of the T assets acquired, the resulting net negative adjustment could reduce P's basis in its S stock below zero. Similarly, the decrease for the fair market value of consideration not provided by P could reduce P's basis below zero.

The new proposed regulations permit a net negative adjustment to P's historic basis in S only in the case in which P and S, or P and T, as applicable, are members of a consolidated group following the triangular reorganization. In the consolidated context, the adjustment may result in an excess loss account under § 1.1502–19 for P in its S or T stock. See new proposed § 1.1502–30.

The new proposed regulations preclude a net negative adjustment in a nonconsolidated context. See new proposed §§ 1.358–6 (c)(1)(ii) and (d)(2). The difference in result is attributable to

the fact that the consolidated return regulations provide for an excess loss account, a concept similar to negative basis, while the concept of negative basis generally is not used under the Code. Thus, in the nonconsolidated context, the adjustment does not result in a negative basis. Moreover, in the nonconsolidated context, the adjustment does not cause a reduction to P's historic basis even if that reduction would not result in a negative basis. In this way, the new proposed regulations do not disfavor the use of an existing S in the reorganization because any historic basis of P in its S stock is not reduced.

(c) *Reverse triangular mergers.* The 1981 proposed regulations generally would have provided that P's basis in T stock in the case of a reverse triangular merger described in sections 368 (a)(1)(A) and (a)(2)(E) was adjusted as if T's assets were acquired in the reorganization. A limited transition rule determined P's basis under section 362(b) (as if the transaction were described in section 368(a)(1)(B)) for reverse triangular mergers occurring before March 3, 1981, that were described in Rev. Rul. 67–448, 1967–2 C.B. 144, if the resulting basis determined under section 362(b) would have been greater than under the general rule.

New proposed § 1.358–6(c)(2)(i) continues the general rule that P's basis in its T stock in the case of a reverse triangular merger is adjusted as if T's assets were acquired. However, if P receives less than all of T's stock in a reverse triangular merger, P's basis in the T stock received is determined only with respect to an allocable portion of the basis determined under new proposed § 1.358–6(c)(2)(i).

In addition, new proposed § 1.358–6(c)(2)(iii) contains a special rule if the transaction qualifies as both a reverse triangular merger and a stock acquisition under section 368(a)(1)(B). Under this rule, P may adjust its basis in its T stock based either on T's asset basis (under the rules set forth in these proposed regulations for forward triangular reorganizations) or on the aggregate basis of the T stock surrendered in the transaction (as if the transaction were a reorganization under section 368(a)(1)(B)).

(d) *Section 1032 nonrecognition treatment.* The 1981 proposed regulations would have extended section 1032 nonrecognition treatment to S on its use of P stock in certain triangular reorganizations.

New proposed § 1.1032–2 generally continues this rule, by providing that the use of P stock provided by P to S, or directly to T or the T shareholders on behalf of S, pursuant to the plan of reorganization is treated as a disposition of those shares by P. Consequently, neither P nor S has taxable gain or deductible loss on the exchange. However, to the extent that S exchanges P stock in the reorganization which it did not receive from P pursuant to the plan of reorganization, S recognizes gain or loss on the exchange of that stock.

F. Proposed Effective Dates

Generally, new proposed § 1.358–6 will apply with respect to all triangular reorganizations occurring on or after December 23, 1994. In addition, with respect to reverse triangular mergers occurring before December 23, 1994, P may adjust its basis in its T stock as if P acquired the stock of the former T shareholders in a transaction in which its basis was determined under section 362(b) (i.e., as a section 368(a)(1)(B) reorganization, without regard to whether the transaction qualifies as such).

Taxpayers should be aware that, although these new proposed regulations will apply only to triangular reorganizations occurring on or after December 23, 1994, the IRS and Treasury believe that any adjustment to P's basis in its S or T stock (as applicable) following a triangular reorganization occurring before December 23, 1994, must be consistent with the adjustment that would be made if P had made the acquisition directly and P then transferred the assets to a controlled subsidiary. With respect to reverse triangular mergers occurring before December 23, 1994, see new proposed § 1.358–6(f)(2).

New proposed § 1.1032–2 will apply with respect to certain triangular reorganizations occurring on or after December 23, 1994. With respect to triangular reorganizations occurring before December 23, 1994, see, e.g., § 1.1032–1 and Rev. Rul. 57–278, 1957–1 C.B. 124.

New proposed § 1.1502–30 will apply with respect to triangular reorganizations occurring on or after December 23, 1994, in which P and S, or P and T, as applicable, are members of a consolidated group following the triangular reorganization. For triangular reorganizations occurring before December 23, 1994, in which P and S, or P and T, as applicable, are members of a consolidated group following the triangular reorganization, any adjustments to P's basis in its S or T stock (as applicable) must be consistent with the rules applicable for nonconsolidated taxpayers. But see §§ 1.1502–31 (59 FR 41666 (Aug. 15, 1994)) and –31T (26 CFR § 1.1502–31T (1994)) for rules determining basis following transactions that are group structure changes.

G. Request for Comments Concerning Related Party and Cross Ownership Issues

The IRS and Treasury request comments concerning the tax consequences that arise in cases of restructurings involving related parties and, more generally, involving cross ownership. For example, Rev. Rul. 69–413, 1969–2 C.B. 55, assumes that the restructuring of an affiliated group described therein is a triangular C reorganization. It is arguable, though, that the restructuring should have been viewed as a reorganization under section 368(a)(1)(D) and treated accordingly. The tax consequences, including the effect on P's basis in S, are different depending on the characterization of the restructuring. After reviewing the comments received in response to this request, the IRS may withdraw, revoke, or obsolete certain rulings.

There may be some historic cross ownership of stock between P and T, or S and T that is affected by a triangular reorganization. For example, S may be a historic owner of some of the T stock outstanding at the time that T merges into S, but S receives no P stock in exchange for its T stock. Comments are requested whether such a merger qualifies as a forward triangular merger, and as to how and when tax consequences relating to the extinguishment of S's stock ownership in T should be accounted for

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing is scheduled for March 31, 1995, at 10 a.m., in the IRS auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by March 10, 1995, and submit an outline of the topics (signed original and eight (8) copies) to be discussed by March 10, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Rose L. Williams, Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1502–30 also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.358–6 is proposed to be added to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

(a) *Scope.* This section provides rules for computing the basis of a controlling corporation in the stock of a controlled corporation as the result of certain reorganizations involving the stock of the controlling corporation as described in paragraph (b) of this section. The rules of this section are in addition to rules under other provisions of the Code and principles of law. See, e.g., section 1001 for the recognition of gain or loss by the controlled corporation on the exchange of property for the assets or stock of a target corporation in a reorganization described in section 368.

(b) *Triangular reorganizations*—(1) *Nomenclature.* For purposes of this section—

(i) *P* is a corporation—

(A) that is a party to a reorganization,

(B) that is in control (within the meaning of section 368(c)) immediately before the reorganization of another party to the reorganization, and

(C) whose stock is transferred pursuant to the reorganization.

(ii) *S* is a corporation—

(A) that is a party to the reorganization, and

(B) that is controlled by *P* before the reorganization.

(iii) *T* is a corporation that is another party to the reorganization.

(2) *Definitions of triangular reorganizations.* This section applies to the following reorganizations (which are referred to collectively as *triangular reorganizations*):

(i) *Forward triangular merger.* A forward triangular merger is a statutory merger of *T* and *S*, with *S* surviving, that qualifies as a reorganization under section 368(a)(1) (A) or (G) by reason of the application of section 368(a)(2)(D).

(ii) *Triangular C reorganization.* A triangular C reorganization is an acquisition by *S* of substantially all of *T*'s assets in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(C).

(iii) *Reverse triangular merger.* A reverse triangular merger is a statutory merger of *S* and *T*, with *T* surviving, that qualifies as a reorganization under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(E).

(iv) *Triangular B reorganization.* A triangular B reorganization is an acquisition by *S* of *T* stock in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(B).

(c) *General rules.* Subject to the special rule provided in paragraph (d) of this section, *P*'s basis in the stock of *S* or *T*, as applicable, immediately after a triangular reorganization, is adjusted as a result of the triangular reorganization under the following rules—

(1) *Forward triangular merger or triangular C reorganization*—(i) *In general.* In a forward triangular merger or a triangular C reorganization, *P*'s basis in its *S* stock is adjusted as if—

(A) *P* acquired the *T* assets acquired by *S* in the reorganization (and *P* assumed any liabilities which *S* assumed or to which the *T* assets were subject) directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b); and

(B) *P* transferred the *T* assets (and liabilities assumed or to which the *T* assets were subject) to *S* in a transaction in which *P*'s basis in *S* stock was determined under section 358.

(ii) *Limitation.* If, in applying section 358, the amount of *T* liabilities assumed by *S* or to which the *T* assets are subject exceeds *T*'s aggregate adjusted basis in its assets, the amount of the adjustment under paragraph (c)(1)(i) of this section is zero. *P* recognizes no gain under section 357(c) as a result of a triangular reorganization.

(2) *Reverse triangular merger*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, in a reverse triangular merger, *P*'s basis in *T* stock is adjusted as if *T* merged into *S* in a forward triangular merger to which paragraph (c)(1) of this section applied.

(ii) *Allocable share.* If *P* receives less than all of *T*'s stock in a reverse triangular merger in which *P* determines its basis in its *T* stock under paragraph (c)(2)(i) of this section, *P*'s basis in the *T* stock received is adjusted only by an allocable portion of the basis adjustment otherwise determined under paragraph (c)(2)(i) of this section.

(iii) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* Notwithstanding paragraph (c)(2)(i) of this section, if a reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B), *P* can—

(A) adjust the basis in its *T* stock as if paragraph (c)(2)(i) of this section applied; or

(B) determine the basis in its *T* stock acquired as if *P* acquired such stock from the former *T* shareholders (other than *P*) in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

(3) *Triangular B reorganization.* In a triangular B reorganization, *P*'s basis in its *S* stock is adjusted as if—

(i) *P* acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b); and

(ii) *P* transferred the *T* stock to *S* in a transaction in which *P*'s basis in its *S* stock was determined under section 358.

(4) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable

triangular reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* with $5 cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth $100 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under paragraph (c)(1) of this section, *P* adjusts its basis in *S* stock immediately after the reorganization by treating *P* as if it acquired the *T* assets acquired by *S* in the reorganization directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $60 in the *T* assets. *P* is then treated as if it transferred the *T* assets to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s basis in its *S* stock would be increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock immediately after the reorganization.

(c) *Use of pre-existing S.* The facts are the same as paragraph (a) of this *Example 1*, except that *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $110 basis in the *S* stock. Under paragraph (c)(1) of this section, *P*'s $110 basis in its *S* stock immediately before the reorganization is increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *S* stock immediately after the reorganization.

(d) *Mixed consideration.* The facts are the same as paragraph (a) of this *Example 1*, except that the *T* shareholders receive *P* stock worth $80 and $20 cash from *P*. Under section 358, *P*'s basis in its *S* stock would be increased by the $60 basis in the *T* assets deemed transferred. Consequently, *P* has a $65 basis in its *S* stock immediately after the reorganization (the $5 initial basis representing the $5 cash retained by *S*, adjusted by $60).

(e) *Liabilities.* The facts are the same as paragraph (a) of this *Example 1*, except that *T*'s assets are subject to $50 of liabilities, and the *T* shareholders receive $50 of *P* stock in exchange for their *T* stock. Under section 358, *P*'s basis in its *S* stock would be increased by the $60 basis in the *T* assets deemed transferred and decreased by the $50 of liabilities to which the *T* assets are subject. Consequently, *P* has a net adjustment of $10 in its *S* stock, and *P* has a $15 basis in its *S* stock immediately after the reorganization.

(f) *Liabilities in excess of basis.* The facts are the same as in paragraph (a) of this *Example 1*, except that *T*'s assets are subject to liabilities of $90, and the *T* shareholders receive $10 of *P* stock in exchange for their *T* stock in the reorganization. Under paragraph (c)(1)(ii) of this section, the adjustment under paragraph (c) of this section is zero if the amount of the liabilities assumed or to which the acquired assets are subject exceeds the aggregate adjusted basis in *T*'s assets. Consequently, *P* has no adjustment in its *S* stock, and *P* has a $5 basis in its *S* stock immediately after the reorganization.

Example 2. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and a fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $110 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive *P* stock worth $100 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply. Because *S* is a previously existing operating company with substantial assets, the transaction does not qualify as a reorganization under section 368(a)(1)(B).

(b) *Basis adjustment.* Under paragraph (c)(2)(i) of this section, *P*'s basis in its *T* stock immediately after the reorganization is the same basis that *P* would have had in *S* stock if *T* had merged into *S* in a forward triangular merger with *S* surviving. In such a case, *P*'s $110 basis in its *S* stock immediately before the reorganization would have been increased by the $60 basis of the *T* assets deemed transferred. Consequently, *P* has a $170 basis in its *T* stock immediately after the reorganization.

(c) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* The facts are the same as in paragraph (a) of this *Example 2*, except that *P* forms *S* pursuant to the plan of reorganization with $5 cash. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. The reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B). Under paragraph (c)(2)(iii) of this section, *P* may adjust its basis in its *T* stock immediately after the reorganization either as if paragraph (c)(2)(i) of this section applied, or as if *P* acquired the *T* stock surrendered by the *T* shareholders in the reorganization in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Accordingly, *P* may adjust its $5 basis by $60 (*T*'s net asset basis) or $85 (the *T* shareholders' aggregate basis immediately before the reorganization in the *T* stock surrendered in the reorganization).

(d) *Allocable share.* The facts are the same as in paragraph (a) of this *Example 2*, except that X, a 10% shareholder of *T*, does not exchange its stock for *P* stock. Thus, immediately after the reverse triangular merger *P* owns less than all of the *T* stock. Under paragraph (c)(2)(ii) of this section, *P* adjusts its basis in the *T* stock only by the allocable portion of the basis adjustment otherwise determined under paragraph (c)(2)(i) of this section. Under paragraph (c)(2)(i) of this section, *P* would adjust its basis in the *T* stock by $60. However, because X did not exchange its 10% interest in *T*, *P* adjusts its basis in the *T* stock by 90% of $60, or $54. Consequently, *P* has an adjustment of $54 in its *T* stock, and *P* has a $164 basis in its *T* stock immediately after the reorganization.

(e) *Liabilities.* The facts are the same as in paragraph (d) of this *Example 2*, except that *T*'s assets are subject to $50 of liabilities. Under paragraph (c)(2)(i) of this section, *P* would adjust its basis in the *T* stock by $10. However, *P* only acquired 90% of the *T* stock and thus, it only adjusts its basis in the *T* stock by 90% of $10, or $9. Consequently, *P* has an adjustment of $9 in its *T* stock, and *P* has a $119 basis in its *T* stock immediately after the reorganization.

Example 3. Triangular B reorganization. (a) *Facts.* *T* has assets with a fair market value of $100 and no liabilities. The *T* shareholders have an aggregate basis in their *T* stock of $85 immediately before the reorganization. Pursuant to a plan, *P* forms *S* with $5 cash and *S* acquires all of the *T* stock in exchange for $100 of *P* stock. The transaction is a reorganization to which section 368(a)(1)(B) applies.

(b) *Basis adjustment.* Under paragraph (c)(3) of this section, *P*'s basis in its *S* stock immediately after the reorganization is adjusted by treating *P* as if it acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in exchange for the *P* stock in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of $85 in the *T* stock received by *S* in the reorganization. *P* is then treated as if it transferred the *T* stock to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s basis in its *S* stock would be increased by the $85 basis in the T stock deemed transferred. Consequently, *P* has a $90 basis in its S stock immediately after the reorganization.

(d) *Special rule for consideration not provided by P*—(1) *In general.* The amount of *P*'s adjustment to basis in its *S* or *T* stock, as applicable, described in paragraph (c) of this section is decreased by the fair market value of any consideration (including *P* stock in which gain is recognized, see § 1.1032–(2)(c)) that is exchanged in the reorganization and that is not provided by *P* pursuant to the plan of reorganization. This paragraph (d) does not apply to the amount of *T* liabilities assumed by *S* or to which the *T* assets are subject under paragraph (c)(1) of this section (or deemed assumed or taken subject to by *S* under paragraph (c)(2)(i) and (ii) of this section).

(2) *Limitation.* *P* makes no adjustment to basis under this section if the decrease required under paragraph (d)(1) of this section exceeds the amount of the adjustment described in paragraph (c) of this section.

(3) *Example.* The rules of this paragraph (d) are illustrated by the following example. For purposes of this example, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions,

and the facts set forth the only corporate activity.

Example. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $100 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under paragraph (c)(1) of this section, *P*'s $100 basis in its *S* stock is increased by the $60 basis in the *T* assets deemed transferred. Under paragraph (d)(1) of this section, the $60 adjustment is decreased by the $30 of cash provided by *S* in the reorganization. Consequently, *P* has a net adjustment of $30 in its *S* stock, and *P* has a $130 basis in its S stock immediately after the reorganization.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 of cash. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $10 of gain under section 1001 on its disposition of the asset in the reorganization.

(d) *Depreciated asset.* The facts are the same as in paragraph (c) of this *Example*, except that *S* has a $60 adjusted basis in the asset. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $30 of loss under section 1001 on its disposition of the asset in the reorganization.

(e) *P stock.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides *P* stock with a fair market value of $30 instead of $30 of cash. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. *S* has a $20 adjusted basis in the *P* stock. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes $10 of gain on its disposition of the *P* stock in the reorganization. See § 1.1032–2(c).

(e) *Cross-reference.* For rules relating to stock basis adjustments made immediately after a triangular reorganization in which *P* and *S*, or *P* and *T*, as applicable, are, or become, members of a consolidated group, see § 1.1502–30.

(f) *Effective dates*—(1) *General rule.* Except as otherwise provided in this paragraph (f), this section applies to triangular reorganizations occurring on or after December 23, 1994.

(2) *Special rule for reverse triangular mergers.* For a reverse triangular merger occurring before December 23, 1994, *P* may—

(i) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applied, or

(ii) Determine the basis in its *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

Par. 3. Section 1.1032–2 is proposed to be added to read as follows:

§ 1.1032–2 Disposition by a corporation of stock of a controlling corporation in certain triangular reorganizations.

(a) *Scope.* This section provides rules for certain triangular reorganizations described in § 1.358–(6)(b) when the acquiring corporation (*S*) acquires property or stock of another corporation (*T*) in exchange for stock of the corporation (*P*) in control of *S*.

(b) *General nonrecognition of gain or loss.* For purposes of § 1.1032–1(a), in the case of a forward triangular merger, a triangular C reorganization, or a triangular B reorganization [as described in § 1.358–6(b)], *P* stock provided by *P* to *S*, or directly to *T* or *T*'s shareholders on behalf of *S*, pursuant to the plan of reorganization is treated as a disposition by *P* of shares of its own stock for *T*'s assets or stock, as applicable.

(c) *Treatment of S.* *S* must recognize gain or loss on its exchange of *P* stock as consideration in a reorganization described in paragraph (b) of this section if *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* or *T* stock, as applicable.

(d) *Examples.* The rules of this section are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger solely for P stock. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. Pursuant to a plan, *P* forms *S* by transferring $100 of *P* stock to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive, in exchange for their *T* stock, the *P* stock that *P* transferred to *S*. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *No gain or loss recognized on the use of P stock.* Under paragraph (b) of this section, the *P* stock provided by *P* pursuant to the plan of reorganization is treated for purposes of § 1.1032–(1)(a) as disposed of by *P* for the *T* assets acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange.

Example 2. Forward triangular merger solely for P stock provided in part by S. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *S* also owns *P* stock with a $20 adjusted basis and $30 fair market value. *S* acquired the P stock in an unrelated transaction several years before the reorganization. Pursuant to a plan, *P* transfers additional *P* stock worth $70 to *S* and *T* merges into *S*. In the merger, the *T* shareholders receive $100 of *P* stock ($70 of *P* stock provided by *P* and $30 of *P* stock provided by *S*). The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Gain or loss recognized by S on the use of its P stock.* Under paragraph (b) of this section, the $70 of *P* stock provided by *P* pursuant to the plan of reorganization is treated as disposed of by *P* for the *T* assets acquired by *S* in the merger. Consequently, neither *P* nor *S* has taxable gain or deductible loss on the exchange of those shares. Under paragraph (c) of this section, however, *S* recognizes $10 of gain on the exchange of its P stock in the reorganization because *S* did not receive the *P* stock from *P* pursuant to the plan of reorganization. See § 1.358–6(d) for the effect on *P*'s basis in its *S* or *T* stock, as applicable.

(e) *Effective date.* This section applies to triangular reorganizations occurring on or after December 23, 1994.

Par. 4. Section 1.1502–30 is proposed to be added under the heading "Basis, stock ownership, and earnings and profits rules" to read as follows:

§ 1.1502–30 Stock basis after certain triangular reorganizations.

(a) *Scope.* This section provides rules for adjusting the basis in the stock of an acquiring corporation immediately after a triangular reorganization. The definitions and nomenclature contained in § 1.358–6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization.* *P* adjusts its basis in the stock of *S* immediately after a forward triangular merger, triangular *C* reorganization, or triangular *B* reorganization under §§ 1.358–6(c) and 1.358–6(d), except that §§ 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities assumed by *S* or the amount of liabilities to which the *T* assets are subject, and

(ii) the fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If *P* adjusts its basis in the *T* stock acquired immediately after a reverse triangular merger under §§ 1.358–6(c)(2) and 1.358–6(d), §§ 1.358–6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets are subject, and

(ii) the fair market value of any consideration not provided by P pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502–19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502–80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Liabilities. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. Pursuant to a plan, *P* forms *S* with $5 of cash (which S retains), and *T* merges into *S*. In the merger, the *T* shareholders receive P stock worth $30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by −$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, immediately after the reorganization, *P* has an excess loss account of $5 in its *S* stock.

Example 2. Consideration not provided by P (a) *Facts.* *T* has assets with an aggregate basis of $10 and fair market value of $100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive $70 of *P* stock provided by *P* pursuant to the plan of reorganization and $30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by −$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). Consequently, immediately after the reorganization, *P* has an excess loss account of $15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a $20 adjusted basis and $30 fair market value instead of $30 cash. The basis is adjusted in the same manner as in paragraph (b) of this *Example 2*. In addition, because S recognizes a $10 gain from the asset under section 1001, *P*'s basis in its *S* stock is increased under § 1.1502–32(b) by *S*'s $10 gain. Consequently, immediately after the reorganization, *P* has an excess loss account of $5 in its *S* stock. (The results would be the same if the appreciated asset provided by *S* was *P* stock in which *S* recognized gain. See § 1.1032–2(c)).

Example 3. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of $60 and fair market value of $100. *T*'s assets are subject to $70 of liabilities. *S* is an operating company with substantial assets that has been in existence for several years. P owns all of the only class of *S* stock. *P* has a $5 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive *P* stock provided by *P* pursuant to the plan worth $30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(E) apply. Because *S* is a previously existing operating company with substantial assets, the transaction does not qualify as a reorganization under section 368(a)(1)(B).

(b) *Basis adjustment.* Under § 1.358–6, *P* adjusts its basis in the *S* stock as if *T* had merged into *S* in a forward triangular merger with *S* surviving. Thus, *P* adjusts its basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358–6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *T* stock by −$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, immediately after the reorganization, *P* has an excess loss account of $5 in its *T* stock.

(c) *Effective date.* This section applies to reorganizations occurring on or after [INSERT THE DAY THE FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL IN THE FEDERAL REGISTER].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–31287 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will meet on January 30, 1995, 10 a.m. to 5 p.m.; January 31, 1995, 8 a.m. to 5 p.m.; February 1, 1995, 8 a.m. to 5 p.m.; February 2, 1995, 8 a.m. to 5 p.m.; February 3, 1995, 8 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the Denver Federal Center, building 85, 6th Avenue and Kipling Streets, Lakewood, Colorado, 80225, telephone (303) 275–7200.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, Colorado, 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and

copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: December 16, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–31563 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

RIN 1029–AB80

Notification and Permit Processing

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

ACTION: Proposed rule; extension of public comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until February 27, 1995, the public comment period on the proposed rule published in the October 26, 1994, **Federal Register** (59 FR 53884). This will provide more time in which to comment on the proposed rule.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5:00 p.m. Eastern time on February 27, 1995.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., room 640 NC, Washington, DC 20240; telephone (202) 343–3839.

SUPPLEMENTARY INFORMATION: On October 26, 1994 (59 FR 53884), OSM published a proposed rule which would require the regulatory authority provide to each person who was a party to an informal conference its written findings granting, requiring modification of, or denying a permit application. The rulemaking would also require both that an approved permit contain in its permit area only lands for which the application has established a right-to-enter and commence surface coal mining and reclamation operations, and that compliance with an approved permit be based on activities to be conducted solely upon such lands.

The comment period for the proposed rule was scheduled to close on December 27, 1994. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on February 27, 1995.

Dated: December 20, 1994.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94–31598 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–146, RM–8557]

Radio Broadcasting Services; Houston, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. requesting the allotment of Channel 242A to Houston, Alaska, as that community's third local FM service. Coordinates used for this proposal are North Latitude 61–38–01 and West Longitude 149–50–28.

DATES: Comments must be filed on or before February 6, 1995, and reply comments on or before February 21, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Edward W. Hummers, Jr. and Frank R. Jazzo, Esqs., Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Rosslyn, VA 22209.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–146, adopted December 7, 1994, and released December 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–31516 Filed 12–22–94; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 210, 215, and 252

Defense Federal Acquisition Regulation Supplement; Specifications and Standards

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect DoD's preference for the use of performance specifications and non-Government standards.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 23, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, PDUSD(A&T)DP(DAR), IMD 3D139,

3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 94–D003 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:

Ms. Michele Peterson, (703) 602–0131.

SUPPLEMENTARY INFORMATION

A. Background

This proposed rule amends DFARS Parts 210, 215, and 252 to reflect DoD's commitment to (1) minimizing the use of military and federal specifications and standards; and (2) maximizing the use of performance specifications and non-Government standards. The rule contains a new solicitation provision and contract clause encouraging offerors and contractors to propose alternatives to specifications and standards cited in DoD solicitations and contracts valued at $100,000 or more.

B. Regulatory Flexibility Act

The proposed changes to DFARS Parts 210, 215, and 252 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule minimizes the use of military and federal specifications and standards in DoD acquisitions. The rule is expected to benefit entities involved in the manufacture and distribution of commercial products. However, the rule may reduce the business base of entities who specialize in manufacturing products in accordance with military and federal specifications and standards. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address stated herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments from small entities concerning the affected subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D003 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. A request for approval of the burden has been submitted to the Office of Management and Budget in accordance with 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 210, 215, and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Parts 210, 215, and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 210, 215, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2. Section 210.002–72 is added to read as follows:

210.002–72 Use of specifications and standards in DoD acquisitions.

(a) Departments and agencies shall use performance specifications in all acquisitions including new systems, major modifications, upgrades to current systems, and nondevelopmental and commercial items.

(b) If it is not cost-effective, does not meet user needs, or is not practicable to use a performance specification, departments and agencies shall use non-Government standards.

(c) A military specification or standard may be used only if—

(1) It applies to reprocurement of a system in Acquisition Category I, II, III, or IV (see DoDI 5000.2) without major modification or upgrade of an item already in the inventory; or

(2) For a program in Acquisition Category I, II, III, or IV, a waiver is granted prior to solicitation, in accordance with department or agency procedures (a waiver is not required for use of a specification or standard prescribed by the FAR or DFARS); and either

(3) Use of a performance specification or non-Government standard would not meet user needs, be cost-effective, or be practicable; or

(4) No acceptable non-Government standard exists.

(d) Departments and agencies shall encourage offerors and contractors to propose alternatives to specifications and standards cited in solicitations and contracts.

(e) Contracting officers will, when appropriate—

(1) Participate with Government technical requirements personnel in obtaining contractor feedback on opportunities to eliminate military and federal specifications and standards, with the objective of maximizing use of performance specifications and non-Government standards in solicitations and contracts;

(2) Structure solicitations to facilitate evaluation and consideration of proposed alternatives to specifications and standards cited in solicitations and contracts;

(3) Develop and include contract incentives to motivate and recognize contractor initiative in proposing viable alternatives to specifications and standards cited in solicitations and contracts. This may take the form of additional profit consideration (see 215.971–2(f)(1)(ii)), award fee, and treatment of proposed alternatives as value engineering change proposals; and

(4) Consider using the value engineering no-cost settlement method at FAR 48.104–3.

3. Section 210.011–70 is amended by adding paragraph (d) and (e) to read as follows:

210.011–70 Solicitation provisions and contract clauses.

* * * * *

(d)(1) Use the provision at 252.210–7005, Alternatives to Specifications and Standards, in all solicitations—

(i) With an expected contract value of $100,000 or more; and

(ii) Issued on or after November 26, 1994.

(2) Use the provision with its Alternate I when sealed bid procedures are used.

(e) Use the clause at 252.210–7006, Alternatives and Updates to Specifications and Standards, in all—

(1) New contracts—

(i) Valued at $100,000 or more; and

(ii) Awarded on or after November 26, 1994; and

(2) Existing contracts—

(i) Valued at $500,000 or more; and

(ii) Having a substantial contract effort remaining to be performed beyond November 26, 1994.

PART 215—CONTRACTING BY NEGOTIATION

4. In Section 215.971–2 paragraphs (f) introductory text and (f)(1) introductory text are republished and paragraph (f)(1)(ii) is revised to read as follows:

215.971–2 Performance risk.

* * * * *

(f)Evaluation criteria for cost control.

(1) The contracting officer should evaluate—

* * * * *

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering,

offering of viable alternatives to specifications and standards);

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 252.210–7005 and 252.210–7006 are added to read as follows:

252.210–7005 Alternatives to Specifications and Standards.

As prescribed in 210.011–70(d)(1), use the following provision:

Alternatives to Specifications and Standards (Date)

(a) The Department of Defense is—

(1) Committed to minimizing the use of military and federal specifications and standards; and

(2) Seeking to use performance specifications and non-Government standards to the maximum extent practicable to satisfy its requirements.

(b) The Offeror—

(1) Is encouraged to identify and propose alternatives to specifications and standards cited in this solicitation;

(2) May submit a proposal to the Contracting Officer that, as a minimum, consists of—

(i) A copy of each of the proposed alternatives;

(ii) A comparison of the proposed alternatives to the specifications or standards cited in the solicitation; and

(iii) An analysis supporting the feasibility and cost-effectiveness of the proposed alternatives.

(c) The Government will, to the maximum extent practicable, evaluate the acceptability of any proposed alternative. If an alternative proposal is not considered for the instant acquisition, it will be considered for future acquisitions. If the Contracting Officer does not accept the Offeror's proposed alternative, the Offeror may agree to perform in accordance with the specified requirements, or may void the offer, at the Offeror's option.

(End of provision)

Alternate I (Date)

As prescribed in 210.011–70(d)(2), add the following paragraph (d) to the basic provision:

(d) Submission of proposed alternatives prior to bid opening will allow Government assessment of the feasibility of the alternatives and, if appropriate, incorporation of the changes into a solicitation amendment.

252.210–7006 Alternatives and Updates to Specifications and Standards.

As prescribed in 210.011–70(e), use the following clause:

Alternatives and Updates to Specifications and Standards (Date)

(a) The Department of Defense is—

(1) Committed to minimizing the use of military and federal specifications and standards; and

(2) Seeking to use performance specifications and non-Government standards to the maximum extent practicable to satisfy its requirements.

(b) The Contractor—

(1) Is encouraged to identify and propose alternatives to specifications and standards cited in this contract;

(2) May submit to the Contracting Officer a proposal addressing alternatives to contractually mandated military, federal, or commercial specifications and standards, consisting of the following:

(i) A copy of each of the proposed alternatives;

(ii) A comparison of the proposed alternatives to the specifications or standards cited in the contract; and

(iii) An analysis supporting the feasibility and cost-effectiveness of the proposed alternatives.

(c) If the Contractor has a contract, or multiple DoD contracts, that incorporate outdated or different versions of cited specifications or standards, the Contractor may request that all of its contracts be updated to the latest version of the applicable specifications or standards. Updating must not affect the form, fit, or function of any deliverable item, and must be beneficial to the Government. The Contractor shall submit requests to the Contracting Officer through the cognizant contract administration office. The Government will, to the maximum extent practicable, evaluate the acceptability of any proposed alternative. If a proposed alternative is not considered for the instant acquisition, it will be considered for future acquisitions. If the Contracting Officer does not accept the proposed alternative, the Contractor agrees to perform the contract in accordance with the specifications and standards cited in the contract.

(End of Clause)

[FR Doc. 94–31456 Filed 12–22–94; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 59, No. 246
Friday, December 23, 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

Cooperative State Research, Education and Extension Service

Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Cooperative State Research, Education and Extension Service announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: January 11–13, 1995.

Time: January 11—1:30 p.m.–5:30 p.m.; January 12—8:00 a.m.–5:30 p.m.; January 13—8:00 a.m.–11:30 p.m.

Place: Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: A meeting on technology assessments will be conducted to achieve the following: (1) fester dialogue about technology assessments (2) communicate and promulgate the need for technology assessments (3) share and improve methodologies for technology assessments (4) use technology assessments in research planning.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, room 316–A Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2255; Telephone (202) 720–3684.

Done in Washington, DC, this 8th day of December 1994.

William D. Carlson,

Acting Administrator.

[FR Doc. 94–31606 Filed 12–22–94; 8:45 am]

BILLING CODE 3410–22–M

Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Cooperative State Research, Education and Extension Service announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences.

Date: February 8–10, 1995.

Time: February 8—1:15 p.m.–5:30 p.m.; February 9—8:00 a.m.–5:00 p.m.; February 10—8:00 a.m.–5:00 p.m.

Place: February 8 (Combined meeting with UAB)—U.S. Department of Agriculture, Administration Building, room 107A, Washington, DC 20250; February 9 (Capitol Hill Room)—Embassy Suites-Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia 22202; February 10 (Capitol Hill Room)—Embassy Suites-Crystal City.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To review the President's proposed budget for agricultural research, education, and extension and to write the annual report on priorities and accomplishments.

Contact Persons for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2255; Telephone (202) 720–3684.

Done in Washington, D.C., this 8th day of December 1994.

William D. Carlson,

Acting Administrator.

[FR Doc. 94–31607 Filed 12–22–94; 8:45 am]

BILLING CODE 3410–22–M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Cooperative State Research, Education and Extension Service announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (hereafter referred to as the UAB).

Date: February 5–8, 1995.

Time: February 5—1:00 p.m.–5:00 p.m.; February 6—8:00 a.m.–12 noon; February 7—1:00 p.m.–5:00 p.m.; February 8—8:00 a.m.–5:30 p.m.

Place: February 5 & 7 (Capitol Hill Room)—Embassy Suites—Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia 22202; February 6—U.S. Department of Agriculture, Administration Building, room 104A, Washington, DC 20250; February 8—U.S. Department of Agriculture, Administration Building, room 104A (8 am–noon), (Combined meeting with the Joint Council); U.S. Department of Agriculture, Administration Building, room 107A (1:15–5:30 pm), Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To review the President's proposed budget for agricultural research, education, and extension and to write the annual report on priorities.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, room 316A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684.

Done in Washington, D.C. this 8th day of December 1994.

William D. Carlson,

Acting Administrator.

[FR Doc. 94–31608 Filed 12–22–94; 8:45 am]

BILLING CODE 3410–22–M

Rural Utilities Service

Announcement of Applications Received Under the Distance Learning and Medical Link Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of applications received.

SUMMARY: The Administrator of the Rural Utilities Service (RUS), successor to the Rural Electrification Administration, is hereby announcing the applications received during the July 14, 1994, and October 14, 1994, application filing deadlines for the Distance Learning and Medical Link Grant Program.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bryant, Jr., Chief, Planning Branch, Rural Utilities Service, telephone number (202) 690–3594.

SUPPLEMENTARY INFORMATION: RUS is hereby publishing the names of the organizations which applied for grants under 7 CFR Part 1703 Subpart D, Distance Learning and Medical Link Grant Program (DLMLGP). These applications contained herein will be considered for funding during Fiscal Year (FY) 1995 as well as applications submitted and postmarked no later than January 14, 1995. A separate notice will be published listing those applications received by the January 14, 1995 filing deadline.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including telecommunications programs authorized by certain statutes. On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

The following information is being published in accordance with § 1703.115, Public notice of applications received. The applicants are as follows:

State	Applicant	Total grant $ requested
AZ	Career Development Inc.	$69,000
KY	University of Louisville Research Foundation, Inc.	500,000
MO	Northwest Missouri School Improvement Consortium.	500,000
OH	Ohio University	455,000
TN	Trinity Elementary School.	50,000
WV	West Virginia University Research Corporation.	322,059
VA	University of Virginia.	500,000

Applicants not selected for funding during FY 1994 may be considered for funding during FY 1995. These applications must be resubmitted and postmarked no later than January 14, 1995.

The notices which contain the lists of 1994 applicants were published on December 21, 1993, at 58 FR 67931 and April 18, 1994, at 59 FR 18355. Due to limited FY 1995 DLMLGP funding the amount awarded to any application selected for FY 1995 will not exceed $350,000.

Organizations wishing to apply for the DLMLGP should call the Rural Development Assistance Staff to obtain the application information package at (202) 690–3594.

Dated: December 14, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–31613 Filed 12–22–94; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 941112–4312]

RIN 0694–AB06

Chemical Weapons Convention Implementation Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of the development of regulations to implement U.S. industry obligations under the Chemical Weapons Convention.

SUMMARY: The Bureau of Export Administration (BXA) is providing notice that it is developing regulations and procedures that specify industry obligations under the Chemical Weapons Convention (CWC). The CWC requires that upon its entry into force, each country that ratifies the Convention adopt the necessary measures to implement its obligations. These include the establishment of a National Authority to oversee compliance with the CWC, and enactment of implementing legislation with penalties for noncompliance. Accordingly, the Clinton Administration has submitted both the treaty and the related implementing legislation to the Congress for consideration.

This advance notice and request for comments is being issued to solicit public comments from industry and the interested public on industry obligations under the CWC before BXA begins to draft regulations.

DATES: Comments should be received by January 23, 1995.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Regulatory Policy Division, room 1087, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For general information, contact Nancy Crowe, Office of Exporter Services, Bureau of Export Administration, telephone: (202)482–2440.

For information on seminars, contact Rodney Menas, Office of Exporter Services, Bureau of Export Administration, telephone: (202) 482–6031.

For a copy of the official text of the Chemical Weapons Convention, entitled "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", contact the Arms Control and Disarmament Agency, telephone: (800) 581–ACDA.

For a copy of "The Chemical Weapons Convention: Guidance for Industry on How to Comply", contact Peter Ruzicka, Office of Congressional and Public Affairs, Bureau of Export Administration, telephone: (202) 482–2721.

SUPPLEMENTARY INFORMATION: On January 13, 1993, the United States along with over 130 other countries signed the Chemical Weapons Convention (CWC, or Convention), and in doing so recognized that chemical weapons (CW) should never be used as implements of war.

The CWC prohibits the development, production, acquisition, retention, transfer and use of chemical weapons. It also requires that each signatory destroy its stocks of chemical weapons, dismantle its chemical weapons production facilities and refrain from assisting any other country's CW programs.

The chemicals covered by the CWC are divided into "schedules" based on their possible utility in developing chemical weapons. Schedule 1 covers known warfare agents and their immediate precursors, which have very limited industrial and medical applications. Schedule 2 covers toxic

chemicals and precursors that have some industrial uses, and Schedule 3 covers chemicals with broader commercial applications. The CWC also covers "other relevant facilities" that produce unscheduled discrete organic chemicals or discrete organic chemicals containing phosphorus, sulphur or fluorine above specific thresholds.

The U.S. chemical industry is dynamic and broad-based. It includes over 12,000 plants, employing over 860,000 people. Based on employment information published in the Bureau of the Census 1990 County Business Patterns, chemical manufacturing facilities are located in nearly every state.

According to the Commerce Department's 1994 Industrial Outlook, chemical and allied product shipments (SIC 28) in 1993 were valued at $311 billion, imports $28 billion, and exports $43 billion. This is the United States' largest exporting sector, and it has maintained a positive trade balance during the last decade.

Because many of the chemicals covered by the CWC have legitimate commercial applications, the Convention will have a far-reaching impact on U.S. industry. For example, thiodiglycol (TDG) is commonly used to manufacture ink for ball-point pens. However, it is also a precursor for the blistering agent mustard. Likewise, trimethyl phosphite is widely used to develop insecticides—it is also a precursor for some nerve agents. Therefore, the production, shipment, use and in some cases storage of such chemicals will be subject to CWC monitoring, affecting up to an estimated 6000 U.S. facilities involved in these activities.

In order to ensure strict compliance with its provisions, the CWC specifies an extensive reporting and international inspection regime for facilities, including civil industries that produce, and in some cases process or consume, chemicals that could be used in weapons programs. It should be noted that the CWC includes extensive confidentiality provisions intended to protect the confidential business information of companies that are subject to the reporting and inspection requirements of the CWC.

As noted above, BXA estimates that CWC reporting requirements may apply to thousands of commercial chemical facilities. In addition, facilities that produce, and in some cases process or consume, specified quantities of CWC-related chemicals will be subject to routine on-site inspections conducted by international inspectors. The Convention also provides for challenge on-site inspections, which may be conducted at any public or private location at the request of another country when there is legitimate concern about activities that may be in violation of CWC provisions.

The reports and inspections will be "site" based. The large chemical companies that have dozens of reportable production and storage sites will be required to submit CWC-required information on each site. Reporting and inspection requirements will be extensive because companies that currently manufacture chemicals that are not considered toxic may have the flexibility to switch production to the more lethal varieties.

In addition to reporting and inspection requirements, the CWC also includes production limits on Schedule I chemicals as well as restrictions on trade in all Scheduled chemicals to ensure that the chemicals are used only for certain activities not prohibited by the Convention.

The CWC also requires that upon its entry into force, each country that ratifies the Convention adopt the necessary measures to implement its obligations. These include the establishment of a National Authority to oversee compliance with the CWC, and enactment of implementing legislation with penalties for noncompliance. Accordingly, the Clinton Administration has submitted both the treaty and the related implementing legislation to the Congress for consideration.

It should be noted that the treaty will not enter into force until 180 days after the 65th nation ratifies. Reports are due to the international organization 30 days thereafter, however U.S. industry will need to submit its reports in advance of entry into force to ensure the U.S. will be in compliance with its international obligations.

The Bureau of Export Administration (BXA) is therefore providing advance notice that it will begin drafting regulations to specify the requirements of the CWC. Because of the potential impact the Convention will have on U.S. industry, BXA is requesting comments from industry and interested public before it begins drafting regulations. Upon receipt and review of comments, BXA will draft regulations and publish them in the **Federal Register**.

BXA intends that all information obtained from the public in connection with this notice be a matter of public record. Comments received will be available for public inspection and copying. BXA will not accept submissions made on a confidential basis. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Dated: December 20, 1994.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 94–31622 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review.

SUMMARY: In response to a request from petitioners, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea. The review covers four manufacturers/exporters of the subject merchandise and the period April 1, 1993, through March 31, 1994. Based on petitioners' withdrawal of

requests for review, the Department previously terminated the review of one manufacturer/exporter and is now terminating the review of two additional manufacturers/exporters.

We have preliminarily determined that one of the four manufacturers/exporters being reviewed made no shipments of subject merchandise to the United States during the period of review. The remaining three manufacturers/exporters failed to respond to our request for information. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the amounts established in these preliminary results.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on CTVs from the Republic of Korea. On April 7, 1994, the Department published (59 FR 16615) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period April 1, 1993, through March 31, 1994 (eleventh review). We received a timely request for review from the United Electronic Workers of America, Independent (formerly the Independent Radionic Workers of America), the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and the Industrial Union Department, AFL–CIO, petitioners in this proceeding. On May 12, 1994, the Department published a notice of initiation (59 FR 24683) covering the following seven manufacturers/exporters: Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung International, Inc. (Samsung), Cosmos Electronics Manufacturing, Ltd., Quantronics Manufacturing, Ltd., Tongkook General Electronics, Inc., Daewoo Electronics Co., Ltd., and Daewoo Electronics Corp. of America, Inc. (Daewoo), Goldstar Electronics International, Inc., Goldstar Co., Ltd., and Goldstar of America, Inc. (Goldstar), and Samwon Electronics, Ltd. On May 23, 1994, petitioners submitted a timely withdrawal of their request for review of Goldstar. The Department terminated the review of Goldstar on June 29, 1994 (59 FR 33486). On June 29, and August 22, 1994, petitioners submitted additional requests to terminate the reviews of Daewoo and Samwon, respectively. Section 353.22(a)(5) of our regulations states that "[t]he Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." Since petitioners' request to terminate the review of Daewoo was submitted within the 90-day period, and no other interested party requested a review of this company, we are terminating this review. While petitioners' request to terminate the review of Samwon was not submitted within the 90-day time limit cited above, because no significant work had yet been done at the time of the request to withdraw, withdrawal does not unfairly burden the Department or other interested parties. Therefore, we have determined that it is reasonable to extend the time limit and terminate this review also. The Department has conducted this 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 include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1993 through March 31, 1994.

Preliminary Results of Review

Samsung reported, and the Department verified through the U.S. Customs Service, that Samsung made no shipments of subject merchandise to the United States during the period of review. Therefore, we preliminarily determine to maintain Samsung's current cash deposit rate. This rate is zero percent because the margin assigned to Samsung in the most recent final results of review (0.37 percent) was a *de minimis* rate.

Since Cosmos, Quatronics, and Tongkook failed to respond to our questionnaire, we have preliminarily determined that, in accordance with section 776(c) of the Tariff Act, the use of best information available (BIA) is appropriate. Our regulations provide that we may consider whether a party refuses to provide information in determining what is the best information available (19 CFR 353.37(b)). Standard Department practice dictates that when a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns that company the higher of (a) the highest rate assigned to any company in any previous review or the less-than-fair-value investigation (LTFV), or (b) the highest rate for a responding company with shipments during the period of review. *See Final Results of Antidumping Duty Administrative Review, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.*, 56 FR 31692 (July 11, 1994). *See also Allied-Signal Aerospace Co.* v. *United States*, 996 F. 2nd 1195, 1191–92 (Fed. Cir. 1993), *Krupp Stahl AG et al* v. *United States*, 822 F. Supp. 789 (CIT May 26, 1993). Therefore, we have used the highest rate from the LTFV investigation, which was 16.57 percent, in determining the margins for these three companies for this review.

We preliminarily determine that the following margins exist for the period April 1, 1993 through March 31, 1994:

Manufacturer/exporter	Percent margin
Samsung	0.37 [1]
Cosmos	16.57
Quantronics	16.57
Tongkook	16.57

[1] No shipments; rate from last review in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of CTVs entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed

companies will be those rates established in the final results of this review; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 13.90 percent, "all others" rate established in the LTFV investigation (49 FR 18336). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

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 could 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 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31635 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–803]

Certain Small Business Telephone Systems and Subassemblies Thereof From Korea; 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 from an importer, TT Systems Corp. (TT Systems), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof (SBTS) from Korea. The review covers one manufacturer/exporter of this merchandise to the United States, SsangBangWool International, Inc. (SBW). The review period is February 1, 1993 through January 31, 1994.

Based on our review of these exports, we preliminarily find dumping margins. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the foreign market value (FMV).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3477 or 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1994, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" (57 FR 3740) of this antidumping duty order for the period February 1, 1993, through January 31, 1994 (57 FR 3740). We received a timely request for review from TT Systems.

On March 14, 1994, we published in the **Federal Register** a notice of initiation of this administrative review (59 FR 11768).

Scope of the Review

Imports covered by this review are shipments of SBTS, currently classifiable under *Harmonized Tariff Schedule* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain SBTS are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24

volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this order: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Such or Similar Comparisons

Pursuant to section 771 (16) (C) of the Tariff Act of 1930 (the Tariff Act), we established four categories of such or similar merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephones sets and consoles; and (d) complete small business telephone systems (systems). However, for all U.S. sales, there were contemporaneous home market sales of identical merchandise to use as the basis for FMV.

United States Price

In calculating USP, because all sales were made directly to unrelated parties prior to importation in the United States, the Department used purchase price for all sales made by SBW, in accordance with section 772(b) of the Tariff Act. We made adjustments, where applicable, for Korean and U.S. brokerage and handling charges, Korean and U.S. inland freight, containerization expenses, wharfage expense, and U.S. duties in accordance with section 772(d) of the Tariff Act.

When comparisons were made to home market sales to which a value-added tax (VAT) was added or in which a VAT was included, we made an addition to USP for the VAT not collected or rebated on export in accordance with section 772(d)(1)(C) of the Tariff Act and our practice, as set forth in *Silicomanganese from Venezuela; Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994) *(Silicomanganese)*.

Foreign Market Value

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales for the relevant such or similar category, in accordance with section 773(a)(1) of the Tariff Act, and found that the home market was viable.

In calculating FMV, the Department used packed, delivered prices to unrelated customers in the home market, in accordance with section 773 of the Tariff Act. We deducted home market packing costs, inland freight and imputed credit costs from the FMV and added U.S. packing costs and U.S. credit. We also adjusted the amount of Korean VAT included in FMV in accordance with our decision in *Silicomanganese*.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period February 1, 1993 through January 31, 1994:

Manufacturer/exporter	Margin (percent)
SsangBangWool International, Inc. (SBW)	2.86

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning the respondent directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 13.90%, the all other rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of the date of publication. A hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice also 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 could 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 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31632 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–817]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Oil Country Tubular Goods ("OCTG") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5055 or (202) 482–0588, respectively

SUPPLEMENTARY INFORMATION: On December 2, 1994, we published a preliminary affirmative countervailing duty determination pertaining to OCTG from Italy (59 FR 61870).

On December 6, 1994, we received a request from petitioner to postpone the final determination in this investigation until the date of the final antidumping determination in the companion antidumping investigation of OCTG from Italy, in accordance with 19 CFR 355.20(c)(1). Therefore, pursuant to petitioner's request and our regulations, we are postponing the final countervailing duty determination in this investigation until April 11, 1995, the date of the final antidumping duty determination in the companion antidumping investigation of OCTG from Italy.

This notice is published in accordance with 19 C.F.R. 355.20(c)(3)(1994).

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31633 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–815]

Alignment of the Final Countervailing Duty Determination with the Final Antidumping Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") From Italy.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5055 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION: On November 28, 1994, we published a preliminary affirmative countervailing duty determination pertaining to seamless pipe from Italy (59 FR 60774).

On November 28, 1994, we received a request from petitioner to postpone the final determination in this investigation until the date of the final antidumping determination in the companion antidumping investigation of seamless pipe from Italy, in accordance with 19 CFR 355.20(c)(1). Therefore, pursuant to petitioner's request and our regulations, we are postponing the final countervailing duty determination in this investigation until April 6, 1995, the date of the final antidumping duty determination in the companion antidumping investigation of seamless pipe from Italy. This notice is published in accordance with 19 C.F.R. 355.20(c)(3)(1994).

Dated: December 16, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31634 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 121594C]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit from Boyd Kynard (P45P).

Notice is hereby given that Boyd Kynard (P45P) has applied in due form to take listed shortnose sturgeon (*Acipenser brevirostrum*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests a 5-year permit to capture, examine, tag, track, artificially spawn, and collect tissue samples of shortnose sturgeon in the Connecticut, Merrimack, Kennebec, Hudson, and Delaware Rivers.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Chief, Endangered Species Division, F/PR8, NMFS, 1315 East-West Hwy., Room 13229, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: December 19, 1994.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–31515 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

December 19, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Non-Cotton Textile Agreement dated September 15, 1994 between the Governments of the United States and the Lao People's Democratic Republic establishes a limit for Categories 340/640 for the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Non-Cotton Textile Agreement dated September 15, 1994 between the Governments of the United States and the Lao People's Democratic Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of 137,813 dozen.

Imports charged to the limit for Categories 340/640 for the period January 1, 1994 through December 31, 1994 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement dated September 15, 1994 between the Governments of the United States and the Lao People's Democratic Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–31620 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 19, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6719. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, as amended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products establishes limits for Taiwan for the period beginning January 1, 1995 and extending through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both parties are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 19, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, as amended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870[1], 369–S[2], 369–O[3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P[4], 669–T[5], 669–O[6], 670–H[7] and 670–O[8], as a group.	556,196,848 square meters equivalent.
Sublevels in Group I	
218	19,623,540 square meters.
225/317/326	34,831,732 square meters.
226	6,320,847 square meters.
300/301/607	1,615,927 kilograms of which not more than 1,346,605 kilograms shall be in Category 300, not more than 1,346,605 kilograms shall be in Category 301 and not more than 1,346,605 kilograms shall be in Category 607.
363	11,906,215 numbers.
369–L/670–L/870	45,267,313 kilograms.
611	2,828,521 square meters.
613/614/615/617	17,542,206 square meters.
619/620	12,893,793 square meters.
625/626/627/628/629.	16,777,870 square meters.
669–P	305,016 kilograms.
669–T	991,366 kilograms.
670–H	17,334,069 kilograms.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S, and 604, as a group.	133,591,270 square meters equivalent.
Within Group I subgroup	
200	634,074 kilograms.
219	14,430,892 square meters.
313	64,050,811 square meters.
314	25,705,245 square meters.
315	19,696,767 square meters.
361	1,273,715 numbers.
369–S	475,589 kilograms.
604	215,638 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C[9], 359–H/659–H[10], 359–O[11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S[12], 659–O[13], 831–844 and 846–859, as a group.	755,000,000 square meters equivalent.
Sublevels in Group II	
237	619,498 dozen.
239	5,386,420 kilograms.
331	499,683 dozen pairs.
336	105,544 dozen.
338/339	749,009 dozen.
340	1,115,560 dozen.
345	110,282 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14].
352/652	2,800,215 dozen.
359–C/659–C	1,447,633 kilograms.
359–H/659–H	4,724,205 kilograms.
433	14,646 dozen.
434	10,169 dozen.
435	24,148 dozen.
436	4,807 dozen.
438	27,138 dozen.
440	5,256 dozen.
442	43,563 dozen.
443	41,004 numbers.
444	58,397 numbers.
445/446	133,410 dozen.
631	4,587,047 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15].
642	777,133 dozen.
643	487,965 numbers.
644	672,061 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16].
659–S	1,601,702 kilograms.
835	17,661 dozen.
Group II subgroup	
333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	73,955,617 square meters equivalent.
Within Group II subgroup	
333/334/335	271,538 dozen of which not more than 147,083 dozen shall be in Category 335.
341	333,206 dozen.
342	208,155 dozen.
350/650	131,377 dozen.
351	346,301 dozen.
447/448	20,012 dozen.
636	368,550 dozen.
641	728,163 dozen of which not more than 254,857 dozen shall be in Category 641–Y[17].
651	434,287 dozen.
Group III	
845	848,664 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2033, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2033, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, as amended.

The conversion factors for the following merged categories are as follows:

Category	Conversion factors (square meters equivalent/category unit)
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
359–H/659–H	11.5
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–31621 Filed 12–22–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List Correction

In the document appearing on page 61881, F.R. Doc. 94–29672, in the issue of December 2, 1994, in the third column, the following NSNs should be deleted from the document: 8415–01–NSH–0151 thru –0192 (Types VI and VII).

G. John Heyer,

General Counsel.

[FR Doc. 94–31582 Filed 12–22–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 23, 1995.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 19, September 2 and November 4, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 21768, 45666 and 55256) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48d and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Accordingly, the following commodity and service is hereby added to the Procurement List:

Commodity

Shampoo, Coal Tar,
6508–00–997–8531

Service

Administrative Services,
Corps of Engineers,
U.S. Army Engineer District,
Louisville, Kentucky

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48d and 41 CFR 51–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Enema Administration Set
6530–00–117–8991
Tray, Desk
7520–00–286–5801
7520–00–285–5043
Mat, Floor
7220–00–205–3099
Slacks, Utility, Woman's
8410–01–074–7874
8410–01–074–6198
8410–01–074–6197
8410–01–074–6194
8410–01–074–6196
8410–01–074–7004
8410–01–074–6200
8410–01–074–7872
8410–01–074–7871
8410–01–074–6195
8410–01–074–7869
8410–01–074–7870
8410–01–074–7873
8410–01–074–7868
8410–01–074–6193
8410–01–074–7003
8410–01–074–6199

G. John Heyer,
General Counsel.

[FR Doc. 94–31581 Filed 12–22–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 23, 1995.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48d) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Medical Transcription, Department of Veterans Affairs, Dwight D. Eisenhower Medical Center, Leavenworth, Kansas
NPA: Kentucky Industries for the Blind, Louisville, Kentucky

Operation of Recycling Center, Minot Air Force Base, North Dakota
NPA: Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota

G. John Heyer,
General Counsel.

[FR Doc. 94–31583 Filed 12–22–94; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange: Proposed Amendments Pertaining to Loadout Requirements for Cotton Delivered in Satisfaction of Cotton Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The New York Cotton Exchange (NYCE) has submitted proposed amendments to rules governing warehouses licensed by the NYCE for delivery of cotton on its futures contracts. The proposed amendments would require that each NYCE-licensed warehouse load out cotton at a rate of ten percent (10%) of the warehouse's total licensed storage capacity per week and that the total time taken by each warehouse to complete the load out may not exceed nine weeks. In accordance with Section 5a(a)(12) of the Commodity Exchange Act, and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that publication of the proposed amendments would be in the public interest. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before January 23, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to NYCE By-Law Section 5.02 establishing load out requirements for NYCE-licensed cotton warehouses.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street

NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The existing provisions of NYCE By-Law Section 5.02 do not provide for a minimum required rate at which NYCE-licensed warehouses must load out cotton that has been delivered on the NYCE's cotton futures contracts following the warehouses' receipt of loading orders from the owners of such cotton. The proposed amendments would provide that NYCE-licensed warehouses must load out futures delivery cotton at a rate of ten percent (10%) of total NYCE-licensed capacity per week, and that the total time taken to load such cotton must not exceed nine weeks. The proposed amendments do not provide for specific monetary penalties to be imposed on warehouse operators if they fail to comply with the above-noted load out requirements. The proposed amendments do provide, however, that a warehouse's NYCE-licensed capacity will be based on its load-out record and, if necessary, the warehouses licensed capacity will be lowered or suspended in the event that a warehouse fails to comply with the proposed load out requirements.

The NYCE proposes to make the proposed amendments effective on August 1, 1995 with respect to all existing NYCE-licensed warehouses on that date and all warehouses that are licensed by the NYCE after that date.

According to the NYCE, the purpose of the proposed amendments is to increase the load-out rate of certificated cotton. The NYCE said that current load-out rates, which it believes are too slow, are negatively affecting the efficiency of the cotton futures market and that the problem will be corrected by the proposed amendments. The NYCE also said that, because other commodity exchanges have established minimum load-out rates, the NYCE is acting in accordance with industry standards in setting a minimum load-out rate for cotton.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the NYCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on December 16, 1994.

Blake Imel,

Acting Director.

[FR Doc. 94–31522 Filed 12–22–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to 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 and Applicable Form: Air Force ROTC Pre-Applicant Questionnaire, AF Form 3846.

Type of Request: New Collection.

Average Burden Hours/Minutes Per Response: 5 minutes.

Responses Per Respondent: 1.

Number of Respondents: 175,000.

Annual Burden Hours: 14,583.

Annual Responses: 175,000.

Needs and Uses: This information collection provides a mailing list for distribution of the scholarship application package to potentially qualified applicants. The screening process saves the Air Force Forms Management Office thousands of printing dollars on unused applications.

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 to DoD, room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 19, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31519 Filed 12–22–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations on environmental restoration at military installations being closed or realigned. The purpose of the meeting is to follow up on the September 28–30, 1994, meeting. The DERTF will also discuss issues related to Superfund reauthorization, innovative technology and natural and cultural resources. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the DERTF should contact Shah Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public witnesses. Written statements must be received by the close of business, January 3, 1995, at the Office of the Deputy Under Secretary of Defense (Environmental Security).

DATES: January 17, 1995—1:00 pm–9:00 pm; January 18, 1995–8:00 am–8:00 pm; January 19, 1995—8:00 am–12:00 pm.

PUBLIC COMMENT PERIODS ARE: January 18, 1995—7:00 pm–8:00 pm; January 19, 1995—8:15 am–8:45 am.

ADDRESSES: Charleston, S.C., 170 Lockwood Drive, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400; telephone (703) 604–5500.

Dated: December 19, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–31518 Filed 12–22–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Army Science Board (ASB)

Date of meeting: 10 & 11 January 1995

Time of meeting: 0800–1700

Place: Pentagon, Washington, DC

Agenda: The Army Science Board's Ad Hoc Study on "ASB Space and Missile Defense Organization" will have its 2nd meeting at the Pentagon on 10 and 11 January. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specially subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified information to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallaher,

Colonel, General Staff, Executive Secretary.

[FR Doc. 94–31723 Filed 12–22–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for Proposed Disposal and Reuse of Naval Base Philadelphia, PA

Pursuant to the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of the disposal and reuse of Naval Base Philadelphia, Pennsylvania. The Naval Base, as defined here, includes the Naval Station, those portions of the Naval Shipyard on League Island that are not being retained by Navy, and the Capehart Family Housing complex located a half-mile to the north of League Island. League Island is located at the confluence of the Delaware and Schuylkill Rivers in the southern portion of the City of Philadelphia.

As directed by the Defense Base Closure and Realignment Act (DBCRA) (PL 101–510), as implemented by the 1991 BRAC process, the Navy plans to close and dispose of portions of the Naval Base. The Naval Station and portions of the Naval Shipyard will be closed in late 1995.

The proposed action to be analyzed in the EIS involves the disposal of land, buildings, and infrastructure for subsequent reuse. The Navy will retain ownership of a portion of the Shipyard for possible future use by the Navy. The Navy will continue to operate the Naval Surface Warfare Center, the Propeller Shop and Foundry, and the Naval Inactive Ship Maintenance Facility. This retained land on the Shipyard totals approximately 300 acres. Other elements of the Shipyard, including five dry docks and over 2.5 million square feet of building space may be made available to lease for other purposes, but Navy will retain ownership. The remainder of the Naval Base, approximately 800 acres, would be disposed of by the Navy.

A Naval Base redevelopment/reuse plan developed by the Mayor of Philadelphia's Commission on Defense Conversion will be the preferred alternative presented in the EIS. The proposed reuse plan comprises over 3.2 million square feet of heavy industrial functions; 2.2 million square feet of light industrial, warehousing, and distribution facilities; 1.4 million square feet of administrative and research/development space; approximately 650,000 square feet of commercial services; a 35-acre institutional campus; a 330-acre future development site; and over 70 acres of common access open space.

The "no action" alternative (Navy retention of Naval Base Philadelphia land and infrastructure in caretaker status) will be addressed in the EIS. However, because of the process mandated by the DBCRA, selection of the "no action" alternative would be considered impracticable for the Navy to implement.

The EIS to be prepared by the Navy will address the following known areas of concern: effects of new development at the Base on the regional socioeconomic environment, potential effects on infrastructure and transportation systems, and the effects of reuse on any historic properties on-site. Preliminary studies indicate that areas within the Naval Base are eligible for listing on the National Register of Historic Places as historic districts, with several other potentially significant archaeological resources also present. Additionally, potential impacts to the natural environment that will be addressed in the EIS include, but are not limited to, air quality, water quality, hazardous materials, wetlands, and endangered species.

The Navy will initiate a scoping process for the purposes of determining the scope of issues to be addressed and for identifying significant issues related to proposed reuse. Navy will hold a public scoping meeting on Wednesday, January 11, 1995, beginning at 7:30 p.m., at the South Philadelphia Community Center, 2600 South Broad Street (corner of South Broad Street and Oregon Avenue), Philadelphia, Pennsylvania. Should inclement weather preclude holding the public scoping meeting on this date, the alternate date for the meeting will be Thursday, January 12, 1995 (meeting to be held at the same location). If there is any question of meeting date in the event of inclement weather, contact the person listed at the end of this notice for confirmation. This notice will also appear in local papers.

A brief presentation will precede a request for public comment and will include a presentation on the proposed reuse plan. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than January 27, 1995, to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113 (Attn: Mrs. Tina Deininger, Code 202), telephone (610) 595–0759.

Dated: December 20, 1994.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–31556 Filed 12–22–94; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL94-39-002]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

December 14, 1994.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Company

[Docket No. EL94-39-002]

Take notice that on August 8, 1994, South Carolina Electric & Gas Company (SCE&G) tendered for filing its refund report in the above-referenced docket. In addition, on September 21, 1994, SCE&G filed a correction to its refund report filed on August 8, 1994.

Comment date: December 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER95-204-000 and ER95-205-000]

Take notice that on December 12, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Amendment to its agreements with Rochester Gas and Electric Corporation (RG&E) and New York State Electric and Gas Corporation (NYSEG) to provide for the sale of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the Seller's Incremental Cost (SIC) plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power recourse). The ceiling rate for capacity is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon RG&E.

Comment date: December 29 , 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Company

[Docket No. ER95-228-000]

Take notice that on November 23, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Sales Tariff between itself and AES Power, Inc. WP&L respectfully a waiver of the Commission's notice requirements, and an effective date of November 10, 1994.

Comment date: December 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Gas Company

[Docket No. ER95-229-000]

Take notice that on November 23, 1994, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's T-2 Transmission Tariff between itself and AES Power, Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of November 10, 1994.

Comment date: December 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER95-258-000]

Take notice that on December 5, 1994, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Orange & Rockland Utilities, Inc. (O&R) to provide for the sale of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr, plus transmission costs, where the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. The ceiling rate for capacity sold by O&R is $14.79 per megawatthour.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: December 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31539 Filed 12-22-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-1507-000]

Washington Water Power Company; Filing

December 19, 1994.

Take notice that on November 3, 1994 and November 4, 1994, Washington Water Power Company tendered for filing amendments in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 30, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervenue. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31541 Filed 12-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-3-000]

Williams Natural Gas Company; Technical Conference

December 19, 1994.

In the Commission's order issued on November 4, 1994 in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for February 7, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31540 Filed 12-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1402-000]

Cenergy, Inc.; Issuance of Order

December 19, 1994.

On June 28, 1994 and October 10, 1994, Cenergy, Inc. (Cenergy) submitted for filing a petition for declaratory order disclaiming jurisdiction, and for waivers, blanket approvals and acceptance of a rate schedule providing for sales at market based rates. Cenergy also requested disclaimer of jurisdiction over Cenergy's brokering activities and waiver of various Commission regulations consistent with those granted other power marketers. In particular, Cenergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cenergy.

On December 7, 1994 the Commission issued a Letter Order (order) granting requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Cenergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Cenergy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Cenergy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 6, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31542 Filed 12-22-94; 8:45 am]

BILLING CODE 6717-01-M

[Dockets Nos. ER94-152-000 and EL94-9-000]

North American Energy Conservation, Inc.; Issuance of Order

December 19, 1994.

On November 11, 1993 and December 28, 1993, North American Energy Conservation, Inc. (NAEC) submitted for filing a rate schedule under which NAEC will engage in wholesale electric power and energy transactions as a marketer. NAEC also requested waiver of various Commission regulations. In particular, NAEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NAEC.

On February 10, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NAEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NAEC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect to any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NAEC's issuances of securities or assumptions of liability.

Notice is hereby given that in this instance the deadline for filing motions to intervene or protests will be thirty days from the date of this notice, and will be January 18, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-31543 Filed 12-22-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5127-7]

National Drinking Water Advisory Council; Request for Nomination of Members

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. Five members of the Council completed their terms on December 15, 1994. This notice solicits names to fill these five vacancies.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current resume providing the nominee's background, experience, and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street, SW, Washington, D.C. 20460, no later than February 17, 1995. The Agency will not formally acknowledge or respond to nominations.

Dated: December 15, 1994.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 94–31614 Filed 12–22–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5127–3; ECAO–RTP–0237]

Draft Health Assessment Document for Diesel Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of external review draft.

SUMMARY: This notice announces the availability an of external review draft of the *Health Assessment for Diesel Emissions* for a 60-day public review and comment period. This draft document was prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD).

DATES: The Agency will make the external review draft available for public review and comment on or about December 27, 1994. Comments must be in writing and must be postmarked by February 28, 1995.

ADDRESSES: To obtain a copy of the external review draft of the *Health Assessment Document for Diesel Emissions* (Volumes I and II), interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562 or fax (513) 684–7566. Please provide your name, mailing address, and the EPA document numbers (EPA/600/8–90/057Ba and Bb).

The draft document also will be available for inspection at the EPA Headquarters Library, Waterside Mall, 401 M Street, S.W., Washington, DC, between 10:00 a.m. and 2:00 p.m., Monday through Friday, except holidays.

Comments on the draft document should be sent to the Project Manager for Diesel Emissions, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52). U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Ewald, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–4164.

SUPPLEMENTARY INFORMATION: The draft *Health Assessment Document for Diesel Emissions* summarizes scientific issues and identifies research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health risks attendant to the use of diesel fuels. In its initial form, the draft health assessment was first reviewed at an expert peer-review workshop in July 1990 (55 FR 28453), which was open to the public. The present draft incorporates revisions made in response to scientific input from the workshop and subsequent comments on targeted issues. After the public comment period and review by EPA's Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), the current draft document will undergo further revision, and a final document will be issued. This document supports EPA's decision-making processes that pertain to the health effects of diesel emissions.

Dated: December 15, 1994.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–31619 Filed 12–22–94; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4718–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 05, 1994 Through December 09, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–K65164–00 Rating LO, Southwestern Region Amendment of Forest Plans, Implementation, Standard and Guidelines for Northern Goshawk and Mexican Spotted Owl, AZ and NM.

Summary:

EPA expressed lack of objection to the proposed action. EPA recommended separate RODs for the Kaibab National Forest LRMP amendment action and the Southwestern Region LRMP amendments action, reevaluation of the base-in-exchange land exchange policies on owl/goshawk habitat lands, and requested a description of the Integrated Resource Management analysis process.

ERP No. D–FHW–D40271–PA Rating EC2, US 219 Transportation Project, Improvement from I–68 to Somerset and US 219 to Meyersdale, Funding, Somerset County, PA.

Summary:

EPA expressed environmental concerns focused on the potential impacts to streams, floodplains, farmlands, and wetlands. Based on the analysis provided in the draft EIS, EPA believed that the potential impacts should be successfully mitigated through the concepts outlined. EPA concurred with the selection of the Western Alternative.

ERP No. D–FHW–G40754–AR Rating EC2, US 71 Highway Transportation Project, Construction between Texarkana to Louisiana State Line, Funding, Right-of-Way and COE Section 404 Permit, Miller County, AR.

Summary:

EPA had environmental concerns and requested that additional information be provided in the final EIS on the rationale used to determine project boundaries. Additional discussion on the applicability of this project to Executive Order 12898 was also requested.

ERP No. D–FRC–B05183–NH Rating EC2, Ayers Island Hydroelectric Project, Issuance of New Licenses/Relicensing for 8.4 Megawatt (MW) Project (FERC NO. 2456–009), Pemigewasset and Merrimack River Basin, Belknap and Grafton Counties, NH.

Summary:

EPA expressed environmental concerns regarding impacts related to dissolved oxygen, metal contamination, and flows. EPA recommended additional analysis of these issues, and the need to quantify the impact of modified peaking and special boating releases to Atlantic Salmon fishing populations.

ERP No. D–ICC–B53011–ME Rating EC2, Skinner and Vanceboro Rail Line (Docket No. AB–213 Sub No. 4) Abandonment or Discontinuation Project, Implementation, Franklin, Somerset, Piscataquis, Penobscot, Aroostock and Washington Counties, ME.

Summary:

EPA had environmental concerns and commented on the need to avoid and minimize project impacts to wetlands

and water supply resources. EPA expressed concerns about the loss of rail capacity and with the proposal to replace rail transport with truck transport. The project related shift of air emissions from ozone attainment areas to ozone non-attainment areas will require the state to implement measures to offset increased air emissions.

ERP No. D–NPS–L61134–OR Rating LO, Crater Lake National Park Development Concept Plan/Amendment to the General Management Plan, Implementation, Klamath County, OR.

Summary:

EPA expressed lack of objection to the proposed project and supports the plans to accommodate visitor demand and protect natural resources by providing shuttle bus service to high use, sensitive areas.

ERP No. DS–FHW–G40127–TX Rating EC2, TX–161 Construction, Updated Information on I–20 to TX–183, Funding, Coast Guard Section 10 Permit and Possible COE Section 404 Permit, Dallas County, TX.

Summary:

EPA had environmental concerns and requested the Texas Department of Transportation through the Federal Highway Administration to update their planning document so it will meet the requirements of the transportation conformity rule (40 CFR, Part 51 Subpart T or 40 CFR Part 93 Subpart A). EPA was also seeking a modification of their discussion of socio-economic impacts to include Environmental Justice as a result of Executive Order 12898.

Final EISs

ERP No. F–FHW–G40136–OK Poteau Bypass Corridor Construction, US 59/US 271 Junction 4.5 Miles to the US 59/OK–112 Junction, Funding and COE Section 404 Permit, City of Poteau, LeFlore County, OK.

Summary:

EPA expressed environmental concerns that additional noise mitigation (soundproofing) was not considered for noise receptors where the proposed action would impose a substantial increase in noise levels. As a result, EPA requested that the Record of Decision include a discussion on soundproofing the receptors.

Regulations

ERP No. R–NRC–A06176–00 10 CFR Parts 2, 51 and 54: Nuclear Power Plant License Renewal, Proposed Revisions.

Summary:

Review of the Regulation was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: December 20, 1994.

Anne Norton Miller,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–31631 Filed 12–22–94; 8:45 am]

BILLING CODE 6560–50–U–M

[ER–FRL–4718–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed December 12, 1994 Through December 16, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940506, DRAFT EIS, NPS, TN, Obed Wild and Scenic River, General Management Plan and Development Concept Plan, Implementation, Morgan and Cumberland Counties, TN, Due: January 30, 1995, Contact: Monika Mayr (615) 346–6294.

EIS No. 940507, DRAFT SUPPLEMENT, AFS, CO, Telluride Ski Area Expansion Project, Implementation, Special-Use-Permit and COE Section 404 Permit, Additional Information, Grand Mesa Uncompahgre and Gunnison National Forests, Norwood Ranger District, San Miguel County, CO, Due: January 30, 1995, Contact: Jeff Burch (303) 874–7691.

EIS No. 940508, DRAFT EIS, FHW, TX, Grand Parkway Segment (TX–99) Improvements Project, from TX–225 to I–10, Funding, COE Section 404 Permit and Right-of-Way Grant, Harris and Chambers Counties, TX, Due: January 30, 1995, Contact: Mr. G.E. Olvera (512) 482–5516.

EIS No. 940509, FINAL SUPPLEMENT, EPA, AL, TX, LA, MS, Gulf of Mexico Outer Continental (OSC) Region Oil and Gas Extraction Activities, General New Source NPDES Permit Issuance, Updated Information, Offshore TX and LA, Due: January 23, 1995, Contact: Norm Thomas (214) 665–2260.

EIS No. 940510, DRAFT EIS, IBR, OR, Fish Passage Improvements, Savage Rapids Dam, Implementation, Grants Pass Irrigation District, Rogue River, Josephine and Jackson Counties, OR, Due: March 20, 1995, Contact: Robert J. Hamilton (208) 378–5087.

EIS No. 940511, FINAL EIS, MMS, TX, AL, LA, MS, 1995 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 152 (April 1995) and 155 (August 1995), Lease Offering, Offshore Marine Environment and Coastal Counties, AL, MS, LA and TX, Due: January 13, 1995, Contact: George Valiulis (703) 787–1662.

EIS No. 940512, DRAFT EIS, FHW, PA, US 220 Transportation Improvements Project, Bald Eagle Village to Interstate 80 (I–80), Funding and COE Section 404 Permit, Blair and Centre Counties, PA, Due: February 20, 1995, Contact: Manual A. Mark (717) 782–3461.

EIS No. 940513, DRAFT EIS, FRC, CA, NV, OR, Tuscarora Natural Gas Pipeline Project, Construction and Operation, Right-of-Way Grant, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Lassen County, CA; Washoe and Storey Counties, NV and Klamath County, OR, Due: February 06, 1995, Contact: Alisa Lykens (202) 208–0766.

Amended Notices

EIS No. 940374, DRAFT EIS, NRC, 10 CFR Part 20: Support of Rulemaking on Radiological Criteria for Decommissioning of NRC-Licensed Nuclear Facilities (NUREG–1496), Implementation, Generic EIS, Due: January 20, 1995, Contact: Frank Cardile (301) 415–6185. Published FR 09–16–94—Review period extended.

EIS No. 940478, DRAFT EIS, DOD, CA, California Acoustic Thermometry of Ocean Climate (ATOC) Program and Marine Mammal Research Program (MMRP), Funding, Marine Mammal Research Permit and COE Nationwide Permits Issuance, Monterey County, CA, Due: January 31, 1995, Contact: Marilyn E. Cox (619) 534–3470. Published FR—12–02–94—Review period extended.

Dated: December 20, 1994.

Anne Norton Miller,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–31630 Filed 12–22–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5127–4]

New Mexico; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Application of New Mexico for Full Program Adequacy Determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit

programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

New Mexico applied for a determination of adequacy under Section 4005 of RCRA. EPA reviewed New Mexico's application and proposed a determination (58 *FR* 181, 48312, September 20, 1994), that New Mexico's MSWLF permit program is adequate to ensure compliance with the revised MSWLF criteria. EPA is today issuing a final determination that New Mexico's program is adequate.

EFFECTIVE DATE: The determination of adequacy for New Mexico shall be effective on December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew Tayrien, Environmental Engineer, Solid Waste Section, US EPA Region 6, Dallas, Texas 75202, (214) 665–8546.

SUPPLEMENTARY INFORMATION

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of New Mexico

On July 20, 1994, New Mexico submitted an application for adequacy determination for New Mexico's municipal solid waste landfill permit program. On September 20, 1994, EPA published a tentative determination of adequacy for all portions of New Mexico's program. Further background on the tentative determination of adequacy appears at 58 FR 181, 48312 (September 20, 1994). A 30-day public comment period was held until October 20, 1994. In this notice of tentative determination, EPA announced that a public hearing would be held if a sufficient number of people requested a hearing. The Agency received one comment letter in response to the tentative determination. No requests for a public hearing were received, therefore, a hearing was not held.

C. Public Comments

EPA received the following comment on the tentative determination of all portions of adequacy for New Mexico's MSWLF permit program.

One commenter representing a private solid waste management company recommended that EPA "condition the award of full program approval upon the deletion of Sections 108(a) and (b) of the New Mexico solid waste disposal regulations." Essentially, this commenter takes exception with the household waste disposal exemption provided in these sections of the New Mexico solid waste management regulations (EIB/SWMR–4).

EPA believes that the regulations in EIB/SWMR–4 are consistent with Subtitle D. EPA addresses the issue of backyard disposal in the criteria for classification of solid waste disposal facilities and practices, codified in 40 CFR Part 257. In the final rule for the Part 257 Criteria, September 13, 1979 **Federal Register** (Criteria for Classification of Solid Waste Disposal Facilities and Practices, Vol. 44, No. 179, 53441), EPA states that "EPA does not believe that Congress intended the Subtitle D classification scheme to be implemented at the household level. RCRA Section 1004(27) refers to wastes from 'community activities.' In addition, the legislative history indicates at several points that 'municipal' wastes are of concern under Subtitle D. The Act's emphasis on 'community' or 'municipal' waste, indicates that the Congress intended to focus on solid waste management at that level rather than at the household level. EPA believes that 'backyard' practices should be controlled through State or local nuisance and public health laws." It is important to note that 40 CFR Section 257.3–7 prohibits the open burning of residential, commercial, institutional or industrial solid waste except for the infrequent burning of agricultural wastes in the field. 40 CFR Section 257.3–7 further requires that these infrequent acts of burning not violate

applicable requirements developed under a State Implementation Plan approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act.

D. Decision

EPA concludes that New Mexico's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted a determination of adequacy for all portions of its municipal solid waste permit program. New Mexico's solid waste program does not apply and cannot be enforced in Indian country in the State. Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with; nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

COMPLIANCE WITH EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: December 6, 1994.

William B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94–31616 Filed 12–22–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2047]

Petition for Reconsideration of Actions in Rulemaking Proceedings

December 21, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed January 9, 1995. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Hazlehurst, Utica and Vicksburg, Mississippi) (MM Docket No. 93–158, RM–8239).

Number of Petition Filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tawas City, Michigan) (MM Docket No. 93–228, RM–8295).

Number of Petition Filed: 1

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–31637 Filed 12–22–94; 8:45 am]

Public Information Collection Approved By Office Of Management and Budget

December 19, 1994.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0457.

Title: Amendment of Part 22 of the Commission's Rules to Establish Standards for Conducting Comparative Cellular Renewal Proceedings–CC Docket No. 90–358.

Expiration Date: 03/31/96.

Estimated Annual Burden: 2,180 total annual hours; 19.81 hours per response.

Description: In a Memorandum Opinion and Order on Further Reconsideration issued in CC Docket No. 90–358, released 07/07/94, the Commission revised certain rules governing the conduct of comparative renewal proceedings in the cellular radio service. Among other things, if a waiver of the step one hearing is granted, a renewal expectancy issue will be designated as part of the step two hearing and will be the most important comparative factor in deciding the case. Renewal applicants will now have sixty days after the issuance of the Public Notice announcing the filing of competing applications to file their renewal expectancy showing. The expedited hearing procedures apply to step one hearings as well as to step two hearings. Challenging applicants must file requests for waiver of step one hearings at the time they file their applications and allow other parties to respond to those requests at the same time that petitions to deny any of the applications are filed, i.e., thirty days after the renewal applicant files its renewal expectancy showing. The Commission amended its rule which required the disclosure of non-FCC misconduct as part of a licensee's renewal expectancy showing. The Commission also vacated the character reporting requirements contained in footnote six of the Reconsideration Order issued in this proceeding. In response to item 8 on FCC Form 405, renewal applicants must reference its most recently filed FCC Form 600 (previously FCC Form 401) or FCC Form 430 by file numbers, date filed, and any other identifying information. FCC Forms 600 and 430 contain relevant questions concerning the general character qualifications of the applicant. If there have been changes in the information submitted since the reference form was filed, the renewal applicant must indicate those changes in a separate exhibit.

OMB Control No.: 3060–0206.

Title: Domestic Public Fixed Radio Services–Part 21.

Expiration Date: 07/31/97.

Estimated Annual Burden: 54,570 total annual hours; 1.9 avg. hours per response.

Description: Part 21 contains the technical and legal requirements for

radio stations operating in the Domestic Public Fixed Radio Services. General requirements under Part 21 are contained in subparts B, C and D. Miscellaneous requirements are found in subpart E. Special requirements for each service are provided in subparts G, I, J, and K. Special requirements for development authorizations are provided in subpart F. The information requested under Part 21 is used by the Commissions staff in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the domestic fixed service. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

OMB Control No.: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan)–Part 61.

Expiration Date: 07/31/97.

Estimated Annual Burden: 972,423 total hours; 203 avg. hours per response.

Description: Sections 201, 202, 203, 204, and 205 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 201, 202, 203, 204 and 205 require that common carriers establish just and reasonable charges, practices and regulations for the services they provide. The schedules containing these charges, practices and regulations must be filed with the Commission which is required to determine whether such schedules are just, reasonable and not unduly discriminatory. Part 61 of the Commission's Rules establishes the procedures for filing tariffs which contain the charges, practices and regulations of the common carriers, supporting economic data and other related documents. Part 61 prescribes the framework for the initial establishment of and subsequent revisions to tariffs. The information is used by the Commission to determine whether the services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–31558 Filed 12–22–94; 8:45 am]

BILLING CODE 6712–01–F

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 29914

Name: Larry Wayne Butler and Peggy Jean Butler dba Butler Forwarding International

Address: P.O. Box 530 Newberry, Fl 32669

Date Revoked: November 7, 1994

Reason: Surrendered license voluntarily.

License Number: 3158

Name: Ronald Ray Hodge dba F.H. Kaysing Co. of Wichita

Address: P.O. Box 12497, Wichita KS 67277

Date Revoked: November 17, 1994

Reason: Surrendered license voluntarily.

License Number: 3720

Name: Richard Boas U.S.A., Inc.

Address: 1000 South Avenue, Ste LL1, Staten Island, NY 10314

Date Revoked: November 17, 1994

Reason: Surrendered license voluntarily.

License Number: 2246

Name: Swift International, Inc.

Address: 7901 4th Street, North #308, St. Petersburg, FL 33702

Date Revoked: November 23, 1994

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tarriffs, Certification and Licensing.

[FR Doc. 94–31593 Filed 12–22–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date reissued
1849	Stiegler Shipping Company, Inc., 1151 Hillcrest Road, Suite F, Mobile, AL 36695.	December 2, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–31594 Filed 12–22–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Star Banc Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Star Banc Corporation, Cincinnati, Ohio; to engage through its wholly-owned subsidiary, in finance company activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-31557 Filed 12-22-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112894 AND 120994

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
New Terex Holdings UK Limited, Terex Corporation, Terex Corporation (Koehring Cranes Division)	95–0197	11/28/94
Ethyl Corporation, Energy BioSystems Corporation, Energy BioSystems Corporation	95–0232	11/28/94
Kirk Kerkorian, New York—New York Hotel and Casino, LLC, New York—New York Hotel and Casino, LLC	95–0353	11/28/94
Spencer F. Kirk, c/o Megahertz Holdings Corporation, U.S. Robotics, U.S. Robotics	95–0356	11/28/94
Frank Pritt, Welsh, Carson, Anderson & Stowe VI, L.P., DCA Holdings, Inc.	95–0376	11/28/94
Welsh, Carson, Anderson & Stowe VI, L.P., Frank Pritt, Attachmate Corporation	95–0377	11/28/94
Front Royal, Inc., Figgie International Inc., Colony Insurance Company and Hamilton Insurance Company	95–0381	11/28/94
Sprout Growth II, L.P., Frank Pritt, Attachmate Corporation	95–0385	11/28/94
Kerry Co-Operative Creameries Limited, Allied Domecq PLC, DCA Food Industries Inc.	95–0398	11/28/94
Dames & Moore, Inc., Fred C. Kreitzberg, O'Brien-Kreitzberg & Associates, Inc.	95–0405	11/28/94
Morgan Stanley Capital Partners III. L.P., CGS Holdings, Inc., CGS Holdings, Inc.	95–0408	11/28/94
Siemens Aktiengesellschaft, Atlantic Richfield Company, 5335 Wisconsin Associates Limited Partnership	95–0409	11/28/94
Warburg Pincus Investors, L.P., Boulder Bancorporation, Inc., The Bank of Boulder	95–0412	11/28/94
Morgan Stanley Group Inc., Jefferson Smurfit Corporation, Jefferson Smurfit Corporation	95–0415	11/28/94
Morgan Stanley Capital Partners III, L.P., Guy P. Gannett Testamentary Trust, Shakopee Valley Printing	95–0423	11/28/94
Apache Corporation, Quantum Fund N.V. (a Netherland Antilles company),	95–0424	11/28/94
Miles Rubin, Richard F. Gilbert, R.D. Simpson, Inc.	95–0425	11/28/94
IES Industries Inc., Union Pacific Corporation, Union Pacific Resources Corporation	95–0429	11/28/94
William Davidson, William Davidson, OIS Optical Imaging Systems, Inc.	95–0430	11/28/94
CVI Holding Corporation, MascoTech, Inc., Holman Boiler Works, Inc.	95–0436	11/28/94
Philips Electronics N.V., HSBC Holdings Inc., Campania Limited	95–0438	11/28/94
Bank of Boston Corporation, Roger T. Kirwan, Ganis Credit Corporation	95–0439	11/28/94
John Hancock Mutual Life Insurance Company, Transamerica Corporation, Transamerica Fund Management Company	95–0444	11/28/94
Holland Chemical International B.V., Chemtech Industries, L.P., Chemtech Industries, Inc.	95–0181	11/29/94
Thyssen Aktiengesellschaft, Edward S. Young, Ken-Mac Metals, Inc	95–0276	11/29/94
Pillowtex Corporation, David H. Murdock, Beacon Manufacturing Company & Wisecasset Mills Company	94–2047	11/30/94
David H. Murdock, Pillowtex Corporation, Pillowtex Corporation	94–2049	11/30/94
Edward S. Rogers, AT&T Corporation, Claircom, Inc.	95–0297	11/30/94
JUSCO Co., Ltd., Kmart Corporation, The Sports Authority, Inc.	95–0375	11/30/94
Jason Incorporated, Milsco Manufacturing Company, Milsco Manufacturing Company	95–0390	11/30/94
Dominion Resources, Inc., BankAmerica Corporation, N.B. Partners, Ltd.	95–0395	11/30/94
Polaris Industries Inc., Polaris Industries Partners L.P., Polaris Industries L.P.	95–0396	11/30/94
W. Hall Wendel, Jr., Polaris Industries Inc., Polaris Industries Inc.	95–0399	11/30/94
E.I. DuPont de Nemours and Company, USX Corporation, Marathon Oil Company	95–0406	11/30/94
USX Corporation, E.I. DuPont de Nemours and Company, Conoco Inc.	95–0407	11/30/94
Kenneth R. Thomson, MEDSTAT Group, Inc. (The), MEDSTAT Group, Inc. (The)	95–0431	11/30/94
Western Gas Resources, Inc., Oasis Pipe Line Company, Oasis Pipe Line Company	95–0246	12/01/94
Seagate Technology, Inc., Applied Magnetics Corporation, Applied Tape Technology, Inc.	95–0337	12/01/94
ConAgra, Inc., Nutcracker Snacks, Inc., Nutcracker Snacks, Inc.	95–0359	12/01/94
Cominco Fertilizers Ltd., Herman T. Wilson, Jr., Western Farmco Holdings, Inc.	95–0421	12/01/94
Herman T. Wilson, Jr., Cominco Fertilizers Ltd., Cominco Fertilizers Ltd.	95–0422	12/01/94
Hong Leong Investment Holdings Pte Ltd., Chemical Banking Corporation, West 45th Street Properties Inc.	95–0467	12/01/94
Mutual Series Fund Inc., Hexcel Corporation (Debtor-in-Possession), Hexcel Corporation (Debtor-in-Possession)	95–0479	12/01/94
Community Health Systems, Inc., Troy Hospital Corporation, Troy Hospital Corporation	95–0341	12/05/94
Wallace K. Tsuha, Jr., MascoTech, MasoTech Controls, Inc., and Schmelzer Corporation	95–0367	12/05/94
MasoTech, Inc., Wallace K. Tsuha, Jr., Saturn Electronics & Engineers, Inc.	95–0369	12/05/94
Quaker Equities, Ltd., Mervyn D. Lentz, The Brescome Distributors Corporation	95–0388	12/05/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112894 AND 120994—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Medeva PLC, Inhalon Pharmaceuticals, Inc., Inhalon Pharmaceuticals, Inc.	95-0401	12/05/94
Zurich Insurance Company, Musket, L.L.C., Musket, L.L.C.	95-0410	12/05/94
Acadia Partners, L.P., Musket, L.L.C., Musket, L.L.C.	95-0411	12/05/94
Science Applications International Corporation, Gwendolyn H. Wright, R.E. Wright Associates, Inc.	95-0426	12/05/94
General Motors Corporation, The Clayton & Dubilier Private Equity Fund IV Ltd. Prt., Lexmark Holding, Inc.	95-0435	12/05/94
Jerral Wayne Jones, Royal Dutch Petroleum Company (a Netherlands company), Shell Oil Company	95-0442	12/05/94
Murray T. Holland, James S. Frank, IVI Management Systems, Inc. and IVI Travel, Inc.	95-0443	12/05/94
CMS Energy Corporation, Niagra Mohawk Power Corporation, Hydra-Co. Enterprises, Inc.	95-0453	12/05/94
Fremont Group, Inc., Fremont Group, Inc., Crown Pacific Limited Partnership	95-0477	12/05/94
Fremont Group, Inc., Crown Pacific Inland Limited Partnership, Crown Pacific Inland Limited Partnership	95-0478	12/05/94
Performance Food Group Company, Millard Milton Robson, Milton's Institutional Foods, Inc.	95-0413	12/06/94
Bally Entertainment Corporation, Caesars World, Inc., Caesars World, Inc.	95-0418	12/06/94
Itochu Corporation, AK Steel Holdings Corporation, Southwestern Ohio Steel, L.P.	95-0449	12/06/94
Itochu Corporation, Itochu Corporation, Southwestern Ohio Steel, L.P. & Nova Steel Processing	95-0450	12/06/94
Sadruddin Hashwani, Occidental Petroleum Corporation, Occidental of Pakistan, Inc.	95-0456	12/06/94
Norwest Corporation, David O. Rogers, Jr., First National Bank in Edinburg	95-0476	12/06/94
America Online, Inc., CMG Information Services, Inc., BookLink Technologies, Inc.	95-0485	12/06/94
Clear Channel Communications, Inc., John T. Lynch, Noble Broadcasting of Houston Inc.	95-0488	12/06/94
Fletcher Challenge Limited, Enron Corp., Joint Energy Development Investments L.P.	95-0489	12/06/94
Joachim Gabor, Shore Enterprises, Inc., Shore Enterprises, Inc.	95-0494	12/06/94
Northern States Power Company, STS Holdings, Inc., STS Hydropower Ltd.	95-0495	12/06/94
CIGNA Corporation, Kajima International, Inc., Industrial Developments International, Inc	95-0496	12/06/94
Dominion Resources, Inc., Household International, Inc., Household Commercial Financial Services, Inc	95-0497	12/06/94
Dataflex Corporation, Philip Doganiero, National Data Products, Inc	95-0501	12/06/94
Hyundai Electronics Industries Co., Ltd., AT&T Corp., AT&T Global Information Solutions Co.	95-0508	12/06/94
The Limited, Inc., Brylane, Inc., Brylane, Inc	95-0512	12/06/94
Century Telephone Enterprises, Inc., Tele-Max, Inc., Tele-Max, Inc	95-0516	12/06/94
FS Equity Partners III, L.P., Brylane, Inc., Brylane, Inc	95-0520	12/06/94
FS Equity Partners II, L.P., Brylane, Inc., Brylane, Inc	95-0521	12/06/94
Kelso Investment Associates IV, L.P., Randolph Medical Inc., Randolph Medical Inc	95-0527	12/06/94
Stichting Administratiekantoor ABN ARMO Holding, MSC Mortgage, Inc., Metropolitan Service Corporation	95-0528	12/06/94
Illinois Tool Works Inc., Automated Packaging Systems, Inc., Automated Label Systems Company (Partnership)	95-0305	12/06/95
Kidd, Kamm Equity Partners, L.P., Orthomet, Inc., Orthomet, Inc	95-0154	12/07/94
Coho Energy, Inc., Morgan Stanley Leveraged Equity Fund II, L.P. (The), Interstate Natural Gas Company	95-0414	12/07/94
Mannesmann AG, Imo Industries, Inc., Deltex Service, Inc	95-0452	12/07/94
Intelligent Electronics, Inc., The Future Now, Inc., The Future Now, Inc	95-0483	12/07/94
Tele-Communications, Inc., Acclaim Entertainment, Inc., Acclaim Entertainment, Inc	95-0487	12/07/94
Western Wireless Corporation, PriCellular Corporation, Louisiana 8 Corporation	95-0503	12/07/94
Datum, Inc., Ball Corporation, Efratom Time and Frequency Products, Inc	95-0519	12/07/94
Cawsl Corporation, Anthony T. Randazzo, North Holding Corp., Inc. d/b/a Guggenheim Metals Co	95-0522	12/07/94
Seneca Foods Corporation, Grand Metropolitan Public Limited Company, The Pillsbury Company	95-0387	12/09/94
Campbell Soup Company, Christopher Goldsbury, Jr., CAG Holdings, Inc., and CAG Management, Inc	95-0502	12/09/94
Ogden Corporation, Cawsl Corp., AMOR 14 Corporation	95-0525	12/09/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-31578 Filed 12-22-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Meeting of the Commission on Child and Family Welfare

AGENCY: Administraiton for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Commission on Child and Family Welfare will hold its first meeting in the LaFayette Room at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024, from 10:30 a.m., Tuesday, January 10, through 4:00 p.m., Thursday, January 12, 1995.

This meeting is open to the public. Public comments will be accepted at the conclusion of the second and third day of the meeting to the extent that time is available. Written statements will also be accepted. If a sign language interpreter is needed, you may contact Kevin Costigan at (202) 401-5565 no later than Tuesday, January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, Commission on Child and Family Welfare, 370 L'Enfant Promenade, SW, Aerospace Bldg, 6th Floor West, Room 616, Washington, DC 20047, (202) 401-9262.

SUPPLEMENTARY INFORMATION: During this meeting, the Commission will consider topics and issues for its report, as required under Pub. L. 102-521.

Dated: December 20, 1994.

Ann Rosewater,

Deputy Assistant Secretary Policy and External Affairs.

[FR Doc. 94-31636 Filed 12-22-94; 8:45 am]

BILLING CODE 4184-01-M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meetings are announced:

Joint Meeting of the Antiviral Drugs Advisory Committee and Nonprescription Drugs Advisory Committee

Date, time, and place. January 11, 1995, 9 a.m. and January 12, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, January 11, 1995, 9 a.m. to 5 p.m.; open committee discussion, January 12, 1995, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committees. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will jointly discuss data submitted in support of supplementary new drug application (NDA) 18–828/S–015, to switch acyclovir 200 milligrams (Zovirax®, Burroughs Wellcome Co.) from prescription to over-the-counter status for the treatment of recurrent genital herpes. Issues and concerns relating to over-the-counter availability of acyclovir for the treatment of recurrent genital herpes were discussed publicly on May 19, 1994; public comment is available for inspection in Docket No. 94N–0006 in FDA's Dockets Management Branch (HFA–305), rm. 1–23, 12420 Parklawn Dr., Rockville, MD.

Closed committee deliberations. On January 11, 1995, the Antiviral Drugs Advisory Committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. January 17 and 18, 1995, 8:30 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, January 17, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; open committee discussion, January 18, 1995, 8:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 3 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anesthetic and Life Support Drugs Advisory Committee, code 12529.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 9, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the NDA 20–478, Sevoflurane®, Abbott Laboratories, to be indicated as an inhalational anesthetic agent.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to a pending investigational new drug application and NDA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. January 20, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 1–800–465–4329, or 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; Mary J. Cornelius, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2194, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Gastroenterology and Urology Devices Panel, code 12523.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues related to a premarket approval application for a metallic mesh stent intended for the relief of urinary obstruction secondary to urethral stricture disease.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding medical devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 26 and 27, 1995; 8 a.m. Holiday Inn—Bethesda, Versailles Ballrooms I through III, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, January 26, 1995, 8 a.m. to 10:45 a.m.; open public hearing, 10:45 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 6:30 p.m.; open public hearing, January 27, 1995, 8 a.m. to 8:45 a.m., unless public participation does not last that long; open committee discussion, 8:45 a.m. to 6:15 p.m.; Nancy T Cherry or Stephanie A. Milwit, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 19, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 26, 1995, the committee will consider available clinical data from completed trials and future clinical development of a therapeutic AIDS vaccine. On January 27, 1995, the committee will discuss the influenza virus vaccine formulation for 1995 through 1996. The committee will also hear an update on a vaccine for the prevention of varicella.

Closed committee deliberations. On January 26, 1995, the committee will review trade secret and/or confidential commercial information relevant to pending product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed.

The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 16, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–31596 Filed 12–22–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HSQ–221–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Continuance of Exemption of Laboratories Licensed by the State of Washington

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that laboratories located in the State of Washington that possess a valid license under the Medical Test Site Licensure Law, Chapter 70.40 of the Revised Code of Washington (RCW), continue to be exempt from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) until October 6, 1996. This represents a continuation of the initial exemption announced on October 6, 1993 (58 FR 52112) for an additional 2 years.

DATES: The continuance granted by this notice is effective until October 6, 1996.

FOR FURTHER INFORMATION CONTACT: Val Coppola, (410) 597–5892.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHS Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet requirements established by the Department of Health and Human Services (HHS). Under the provisions of the sentence following section 1861(s)(14) and paragraph 1861(s)(16) of the Social Security Act, any laboratory that also wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHS Act. Subject to specified exceptions, laboratories must have a current and valid CLIA certificate to test human specimens and to be eligible for payment from the Medicare or Medicaid programs. Regulations implementing section 353 of the PHS Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in a State that applies requirements that are equal to or more stringent than those of CLIA. The statute does not specifically require the promulgation of criteria for the exemption of laboratories in a State. The decision to grant CLIA exemption to laboratories within a State is at the discretion of HCFA, acting on behalf of the Secretary of HHS.

42 CFR part 493 subpart E implements section 353(p) of the PHS Act. Section 493.513 provides that HCFA may exempt from CLIA requirements, for a period not to exceed 6 years, all State licensed or approved laboratories in a State if the State meets specified conditions. Section 493.513(k) provides that we will publish a notice in the **Federal Register** announcing the names of States whose laboratories are exempt from meeting the requirements of part 493. On October 6, 1993, we published a notice in the **Federal Register** announcing that the State of Washington had applied for exemption of its laboratories from CLIA requirements; that the evaluation of this application demonstrated that all requirements for exemption were met; and that Washington was granted an exemption.

II. Requirements for Granting CLIA Exemption

In order to determine whether we should grant or continue an existing CLIA exemption to laboratories within a State, we conduct a detailed and in-depth comparison of State and CLIA requirements to determine whether the State meets the requirements at § 493.513. In summary, the State must:

- Have laws in effect that provide for requirements that are equal to or more stringent than CLIA requirements;
- Have an agency that licenses or approves laboratories that meet State requirements which meet or exceed CLIA requirements, and, therefore, meet the condition level requirements of the CLIA regulations;
- Meet the requirements and be approved in accordance with § 493.515, Federal review of laboratory requirements of State laboratory programs;
- Demonstrate that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;
- Permit HCFA or HCFA agents to inspect laboratories within the State;
- Require laboratories within the State to submit to inspections by HCFA or HCFA agents as a condition of licensure;
- Agree to pay the cost of the validation program administered by HCFA and the cost of the State's pro rata

share of the general overhead to develop and implement CLIA as specified in §§ 493.645(b) and 493.646; and

• Take appropriate enforcement action against laboratories found by HCFA or HCFA agents not to be in compliance with requirements comparable to condition level requirements.

As specified in our regulations at 42 CFR 493.515, our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of:

• Whether the State's requirements for laboratories are equivalent to or more stringent than the condition level requirements;

• The State's inspection process requirements to determine:

+ The comparability of the full inspection and complaint inspection procedures to those of HCFA;

+ The State's enforcement procedures for laboratories found to be out of compliance with its requirements; and

+ The ability of the State to provide HCFA with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in HCFA-approved PT programs and with other data HCFA determines to be necessary for validation and assessment of the State's inspection process requirements;

• The State's agreement with HCFA to ensure that the agreement obligates the State to:

+ Notify HCFA within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned;

+ Notify HCFA within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

+ Notify each laboratory licensed by the State within 10 days of HCFA's withdrawal of the exemption;

+ Provide HCFA with written notification of any changes in its licensure (or approval) and inspection requirements;

+ Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;

+ Take the appropriate enforcement action against laboratories found by HCFA not to be in compliance with requirements comparable to condition level requirements and report these enforcement actions to HCFA;

+ Notify HCFA of all newly licensed laboratories, including the specialties and subspecialties for which any laboratory performs testing, within 30 days; and

+ Provide HCFA, as requested, inspection schedules for validation purposes.

III. Evaluation of the Washington Request for Continued CLIA Exemption

Washington has applied to HCFA for continued exemption of its laboratories from CLIA requirements.

As with the initial application, we evaluated the request for continuation of the Washington CLIA exemption for equivalency against the three major categories of CLIA rules: The implementing regulations, the enforcement regulations, and the deeming/exemption requirements.

We evaluated the application to verify Washington's assurance of compliance with the following subparts of part 493: Subpart A, General Provisions; Subpart E, Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under An Approved State Laboratory Program; Subpart H, Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both; Subpart M, Personnel for Moderate and High Complexity Testing; Subpart P, Quality Assurance for Moderate or High Complexity Testing, or Both; Subpart Q, Inspection; and Subpart R, Enforcement Procedures.

Washington was found to continue to meet the requirements of Subparts E, H, M, P, Q, and R, exactly as they had been described in the October 6, 1993 **Federal Register** notice. We also evaluated Washington's compliance with Subpart A, as described below.

Subpart A, General Provisions

Washington has modified a portion of its requirements which deal with laboratories that perform certain moderate complexity microscopic examinations. Due to the labile nature of the material examined, the time required to perform routine inspections of this testing is less than the time required to inspect most other moderate complexity procedures. The State has developed this subdivision of moderate complexity testing in order to reduce the licensure charges to the laboratories that perform only waived tests and one or more of the following:

• Wet mounts;

• Potassium hydroxide preparations;

• Pinworm examinations;

• Fern tests;

• Post-coital examinations, qualitative;

• Nasal smears for eosinophiles;

• Post vasectomy semen analysis, qualitative; and

• Any other tests classified as physician-performed microscopy procedures under Federal law and regulation. All regulatory requirements for moderate complexity testing apply to the laboratories performing the tests within this subcategory. These tests satisfy the requirements of Subpart A of 42 CFR 493.

IV. Validation Inspections

The Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.517, were conducted on a representative sample basis as well as in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections has been and will continue to be HCFA's principal tool for verifying that the laboratories located in and licensed by the State are in compliance with CLIA requirements.

HCFA staff of the Laboratory Survey Section, Division of Health Standards and Quality in the HCFA Regional Office in Seattle, Washington have conducted validation inspections of approximately 7 percent of the laboratories inspected by the Washington Office of Laboratory Quality Assurance (LQA). The validation inspections were of the concurrent type; i.e., HCFA inspectors accompanied Washington's inspectors, each inspecting against his or her agency's respective regulations. Analysis of the validation data revealed no significant differences between the State and Federal findings. The Washington inspection process covers all appropriate CLIA conditions and the State laboratory licensure requirements were found to meet or exceed CLIA requirements. The HCFA survey staff found the State inspectors highly skilled and qualified. The LQA is maintaining its workload at the proper level to assure that all laboratories within the State will be inspected in a 24 month cycle. All parameters monitored by HCFA staff to date indicate that the LQA is meeting all requirements under the CLIA exemption. This Federal monitoring will continue as an on-going process.

The CLIA exemption of laboratories located in and licensed by Washington may be removed if we determine the outcome and comparability review of validation inspections are not acceptable as described under § 493.521 or if Washington fails to pay the required fee every 2 years as required under § 493.646.

V. Laboratory Data

In accordance with § 493.513(d)(2)(iii), Washington will

continue to agree to provide us with changes to a laboratory's specialties or subspecialties based on the State's survey. Washington also will provide us with changes in a laboratory's certification status, such as a change from a regular certificate to a certificate of waiver.

VI. Required Administrative Actions

CLIA is intended to be a totally user-fee funded program. The registration fee paid by the laboratories is intended to cover the cost of the development and administration of the program. However, when a State's application for exemption is approved, we may not charge a fee to laboratories in the State. The State's share of the costs associated with CLIA must be collected from the State. 42 CFR 493.645 specifies that HHS will assess fees such that the costs of administering the CLIA program will be shared by all States including those that are CLIA exempt.

Washington must pay for:

- Costs of Federal inspection of laboratories in the State to verify that standards are enforced in an appropriate manner. The average cost per validation survey nationally is multiplied by the number of surveys that will be conducted.
- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We will bill Washington on an semi-annual basis.
- Washington's proportionate share of the costs associated with establishing, maintaining, and improving the CLIA computer system, a portion of those services from which Washington received direct benefit or contributed to the CLIA program in the State. Thus, Washington is being charged for a portion of HCFA's direct and indirect costs as well as a portion of the costs incurred in Federal fiscal years (FYs) 95–96 by the Centers for Disease Control and Prevention.

In order to estimate Washington's proportionate share of the general overhead costs to develop and implement CLIA we determined the ratio of laboratories in the State to the total number of laboratories nationally. Approximately 1.6 percent of the registered laboratories are in Washington. We determined that 1.6 percent of the applicable CDC and HCFA costs for FY 95–96 should be borne by Washington.

Washington has agreed to pay us the State's pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

VII. Approval

HCFA grants continuance of the CLIA exemption for all specialties and subspecialties to all laboratories located in and licensed by the State of Washington effective December 23, 1994, to October 6, 1996.

VIII. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice announces the continuance of the exemption of laboratories licensed by the State of Washington from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The State has established that the quality of laboratory services continues to meet standards equivalent to or more stringent than those of the CLIA program and also has established that it has a comparable program to monitor and evaluate compliance with the standards. The effect of the continued exemption from CLIA requirements is that laboratories will remain under State, rather than Federal, regulation, with no discernible difference in the operations of the programs. Consequently, we anticipate that our continuation of Washington's CLIA exemption will not affect the laboratories or the quality and availability of services provided.

Therefore, we have determined, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities and will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353p of the Public Health Service Act (42 U.S.C. 263a).

Dated: October 12, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–31513 Filed 12–22–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Availability of Funds for the Provision of Technical and Other Non-Financial Assistance to Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of discretionary funds of approximately $400,000 in fiscal year (FY) 1995 for new organizations seeking to provide technical and other non-financial assistance on either a Statewide or regional basis to Community and Migrant Health Centers (C/MHCs) under sections 333(d), 330(f)(1) and 329(g)(1) of the Public Health Service Act.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–01) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

APPLICATION DEADLINES: New applications to provide technical and other non-financial assistance under

sections 333(d), 330(f)(1) and 329(g)(1) must be received no later than (insert 30 days from date of publication). Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline; or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.) Late applications not accepted for processing will be returned to the applicant.

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs), whose names and addresses are provided in the appendix to this document, are responsible for distributing application kits and guidance (PHS form 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control numbers 0937—0189). Completed applications must be submitted to them. New applicants should contact the appropriate RGMO to obtain application kits and guidance. The RGMOs are also available to provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information about the availability of sections 329(g)(1), 330(f)(1) and 333(d) funds, contact Richard C. Bohrer, (301) 594–4300.

SUPPLEMENTARY INFORMATION:

Grant Awards

It is anticipated that approximately $400,000 in discretionary grants will be awarded to new applicants proposing to provide technical and other non-financial assistance.

Number of Awards

Approximately 2 new awards will be made, with awards averaging approximately $200,000. Awards will be made for a one year budget period. Project periods will be up to two years.

Eligible Applicants

Eligible applicants are private nonprofit entities, including (but not limited to) associations with Statewide or regional scope. For the purpose of carrying out these legislative authorities, regional refers to a cluster of States, while State-based assistance relates specifically to a single State. At either level, the assistance addresses the application/implementation of national policies, priorities, concerns and expectations, in the context of the regional or State environment.

Review Criteria

Applicants for funding to provide technical and other non-financial assistance to C/MHCs and other similar providers will be evaluated according to their ability to perform activities in each of five program areas: (1) Management for growth; (2) retention and recruitment; (3) quality of care; (4) managed care and financing; and (5) improved health outcomes.

Specifically, applicants will be evaluated according to their ability to: Plan for primary care resources; collaborate with other primary care delivery systems on State or regional issues; promote the support and involvement of city and county health departments and other State agencies in comprehensive, community based primary care; provide and arrange for training and technical assistance, including support for providers to be able to deliver culturally and linguistically competent care, and assistance to primary care grantees in their efforts to recruit and maintain a diversified staff; and provide and/or arrange for shared services and joint purchasing.

Recipients are expected to engage in activities as described in the document, "Program Expectations for State Primary Care Cooperative Agreement Offices and Primary Care Associations", available from the RGMOs. Appropriate activities include: Services to members; facilitation of State support for primary care that is comprehensive, community based and culturally competent; promotion of broad reimbursement for primary care within State Medicaid programs and health care reform activities (e.g. inclusion of dental services, enabling services such as transportation, translation and case management, environmental health services, mental health and substance abuse services, and preventive services; inclusion of nurse practitioners, physician assistants and certified nurse midwives); community and project development in needy areas (or for needy population groups) that incorporates State supported entities as part of the primary care system; coordination and collaboration between city/county health departments and HRSA supported and similar primary care delivery systems; linkages between State medical, dental, certified nurse midwife, physician assistant and nurse practitioner educational programs and HRSA supported and similar primary care delivery systems; coordination of primary care planning and services with State Maternal and Child Health programs, Ryan White Titles I and II programs, homeless, migrant and seasonal farm worker, immigrant services, and other programs including or targeting underserved areas or population.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kits will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Applicants (other than Federally recognized Indian Tribal governments) should contact their State Single Points of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The Bureau of Primary Health Care does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

Public Health System Reporting Requirement

Section 329 and Section 330 programs are subject to the Public Health System Reporting Requirement, PHS Circular 92.01. Reporting requirements have been approved by the OMB under control numbers 0937–0195. Under this requirement, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) A copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to

exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is listed as Number 93.246.

Dated: December 20, 1994.

Ciro V. Sumaya,

Administrator.

Appendix—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II: Frank Di Giovanni, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III: Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII: Susan Jaworowski, Acting Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Ken Souza, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

[FR Doc. 94–31555 Filed 12–22–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3778–N–16]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–0G (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the data of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; Department of Interior: Lola D. Knight, Property Management

Specialist, Dept. of Interior, 1849 C St. NW. Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: December 16, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 12/23/94

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T274, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440389
Status: Unutilized
Comment: 3967 sq. ft., 1-story, most recent use—clinic, needs rehab, off-site use only.

Bldg. T407, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440390
Status: Unutilized
Comment: 2524 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only.

Bldg. T408, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440391
Status: Unutilized
Comment: 1150 sq. ft., 1-story, most recent use—admin., needs rehab, off-site use only.

Bldg. T417, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440392
Status: Unutilized
Comment: 432 sq. ft., 1-story, most recent use—admin., off-site use only.

Bldg. T421, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440393
Status: Unutilized
Comment: 1602 sq. ft., 1-story, most recent use—support activity, needs rehab, off-site use only.

Bldgs. T614, T692
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number 219440394
Status: Unutilized
Comment: 2314 sq. ft. & 2685 sq. ft., 1-story bldgs., most recent use—admin., off-site use only.

7 Bldgs.
Fort McClellan
#829–831, 833, 835–836, 844
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440395
Status: Unutilized
Comment: 4425 sq. ft. each, 2-story, most recent use—barracks, off-site use only.

Bldg. T00893
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440396
Status: Unutilized
Comment: 3269 sq. ft., 1-story, most recent use—chapel, off-site use only.

Bldgs. T903, T909
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440397
Status: Unutilized
Comment: 1677 sq. ft. and 1166 sq. ft. bldgs., most recent use—classroom, off-site use only.

Bldgs. T916–T917, T925
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440398
Status: Unutilized
Comment: 3075–4500 sq. ft., 1-story, most recent use—barracks, off-site use only.

Bldg. T1398
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440399
Status: Unutilized
Comment: 3108 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only.

Alaska

Bldg. 400
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440400
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 402
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440401
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood, presence of lead paint and asbestos, off-site use only.

Bldg. 407
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440402
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Georgia

Bldg. T–723
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219440403
Status: Unutilized
Comment: 9190 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. T–121
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219440404
Status: Unutilized
Comment: 1842 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. T–154
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440405
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only

Bldg. T–155
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440406
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. T–284
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440407
Status: Unutilized
Comment: 960 sq. ft., 1-story metal frame, needs rehab, most recent use—gen. storehouse, off-site use only.

Bldg. TT–0791
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440408
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. TT–0792
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440409
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only

Bldg. TT–0793
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440410
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. T–8041
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440411

Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only.

Bldg. T–9591
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440412
Status: Unutilized
Comment: 11462 sq. ft., 1-story wood frame, needs rehab, most recent use—theater w/ dressing room, off-site use only.

Kansas

Bldg. T–1030
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440413
Status: Unutilized
Comment: 19377 sq. ft., 1-story wood frame, most recent use—storage, off-site use only.

Bldg. T–1035
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440414
Status: Unutilized
Comment: 496 sq. ft., 1-story wood frame, most recent use—storage, off-site use only.

Bldg. 1362
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440415
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1457
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440416
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1458
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440417
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1462
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440418
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1464
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440419
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1358
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440420
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1359
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440421
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1454
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440422
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1455
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440423
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldg. 1461
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219440424
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Kentucky

Bldg. 01472, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440278
Status: Unutilized
Comment: 8029 sq. ft., 1-story, most recent use—scout bldg., needs rehab, presence of asbestos, off-site use only.

Bldg. 02234, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440279
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02238, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440280
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02239, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440281
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02240, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440282
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02241, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440283
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02243, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440284
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02247, Fort Campbell
Ft. Campbell Co: Christian, KY 42223–
Landholding Agency: Army
Property Number: 219440285
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02748, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440286
Status: Unutilized
Comment: 2950 sq. ft., 1-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.

Bldg. 02268, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440287
Status: Unutilized
Comment: 2250 sq. ft., 1-story, most recent use—classroom, needs rehab, presence of asbestos, off-site use only

Bldg. 02951, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440288
Status: Unutilized
Comment: 2500 sq. ft., 1-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only.

Bldg. 05632, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440289
Status: Unutilized

Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Bldg. 05634, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440290
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Bldg. 05638, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440291
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Bldg. 05642, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440292
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Bldg. 05644, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440293
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Missouri

Bldg. T–2143
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440324
Status: Excess
Comment: 4270 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2144
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440325
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2158
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440326
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2159
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440327
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2161
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440328
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2162
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440329
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2173
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440330
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2188
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440331
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2189
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440332
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2190
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440333
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

New York

Bldg. T–12, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440425
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office, needs rehab, off-site use only.

Bldg. T–467, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440426
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only.

Bldg. T–468, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440427
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only.

Bldg. T–683, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440428
Status: Unutilized
Comment: 4160 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only

Bldg. P–2012, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440429
Status: Unutilized
Comment: 450 sq. ft., most recent use—water distribution bldg., off-site use only.

Bldg. T–2408, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440430
Status: Unutilized
Comment: 3202 sq. ft., 1-story, most recent use—dental clinic, needs rehab, off-site use only.

Bldg. T–2420, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440431
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–2421, Fort Drum
Ft. Drum Co: Jefferson NY 13602–

Landholding Agency: Army
Property Number: 219440432
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–2422, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440433
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–2423, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440434
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–2426, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440435
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–2430, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440436
Status: Unutilized
Comment: 4837 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only.

Bldg. T–2441, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440437
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only.

Bldg. T–4886, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only.

North Carolina

Bldg. H–1838, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440318
Status: Excess
Comment: 3145 sq. ft., 1 story wood frame, needs rahab, off-site removal only, most recent use—parachute packing.

Bldg. H–1839, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440319
Status: Excess
Comment: 4094 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing.

Bldg. 2–3208, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440320
Status: Excess
Comment: 800 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—storage.

Bldg. 2–3309, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440321
Status: Excess
Comment: 22636 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—vehicle maintenance shop.

Bldg. 0–9045, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440322
Status: Excess
Comment: 7680 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—open end barn.

Bldg. 6–9273, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440323
Status: Excess
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—fire station admin.

Oklahoma

Bldg. T–268, Fort Sill
268 Corral Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440338
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–269, Fort Sill
268 Corral Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440339
Status: Excess
Comment: 7840 sq. ft., 2 story wook frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–281, Fort Sill
281 Corral Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440340
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3731, Fort Sill
3731 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440341
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3632, Fort Sill
3632 Scott Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440342
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3656, Fort Sill
3656 Swartz Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440343
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3657, Fort Sill
3657 Swartz Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440344
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3719, Fort Sill
3719 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440345
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3720, Fort Sill
3720 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440346
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3723, Fort Sill
3723 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440347
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3724, Fort Sill
3724 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440348
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3725, Fort Sill
3725 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440349
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3726, Fort Sill
3726 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440350
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3728, Fort Sill
3728 Webster Street

Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440351
Status: Excess
Comment: 3162 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—storage.

Bldg. T–3732, Fort Sill
3732 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440352
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3733, Fort Sill
3733 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440353
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3734, Fort Sill
3734 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440354
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3735, Fort Sill
37354 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440355
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3736, Fort Sill
3736 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440356
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3739, Fort Sill
3739 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440357
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3750, Fort Sill
3750 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440358
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3752, Fort Sill
3752 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440359
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3753, Fort Sill
3750 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440360
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3754, Fort Sill
3754 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440361
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3755, Fort Sill
3750 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440362
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3756, Fort Sill
3750 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440363
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–5216, Fort Sill
5216 Conklin Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440364
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–5217, Fort Sill
5217 Conklin Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440365
Status: Excess
Comment: 4900 sq. ft., 2-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg T–5218, Fort Sill
5218 Conklin Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440366
Status: Excess
Comment: 4900 sq. ft., 2-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–3738, Fort Sill
3738 Webster Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440367
Status: Excess
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.

Bldg. T–2441, Fort Sill
2441 Miner Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440368
Status: Excess
Comment: 1686 sq. ft., 1-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3645, Fort Sill
3645 Tacy Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440369
Status: Excess
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3715, Fort Sill
3715 Tacy Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440370
Status: Excess
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.

Bldg. T–3740, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440371
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin. off-site use only.

Bldg. T–3744, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440372
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–3745, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440373
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.

Bldg. T–3748, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440374
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin., off site use only.

Bldg. T–3757, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440375
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only

Bldg. T–5215, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army

Property Number: 219440376
Status: Unutilized
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.

Bldg. T–3721, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440377
Status: Unutilized
Comment: 3042 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.

Bldg. T–3737, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440378
Status: Unutilized
Comment: 2964 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.

Bldg. T–3758, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440379
Status: Unutilized
Comment: 3132 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.

Bldg. T–3751, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440380
Status: Unutilized
Comment: 3141 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.

Bldg. T–5219, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440381
Status: Unutilized
Comment: 2662 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.

Bldg. T–3631, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440382
Status: Unutilized
Comment: 4530 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—dayroom, off-site use only.

Bldg. P–2938, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440383
Status: Unutilized
Comment: 23 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T–4226, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T–5009, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440385
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. T–3749, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440386
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Bldg. P–1815, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440388
Status: Unutilized
Comment: 14392 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Texas

Bldg. 1, Fort Hood
Lubbock Co: Lubbock TX 79408–
Landholding Agency: Army
Property Number: 219440336
Status: Unutilized
Comment: 11440 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center.

Bldg. 2, Fort Hood
Lubbock Co: Lubbock TX 79408–
Landholding Agency: Army
Property Number: 219440337
Status: Unutilized
Comment: 2818 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. No. 165, Pump House
Fuel Tank Farm on Nyman's Peninsula
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 879440028
Status: Unutilized
Reason: Secured Area.

Arkansas

Paul Ray/Barbara Still House
Hwy. 268
Yellville Co: Marion AR 72687–
Landholding Agency: Interior
Property Number: 619440006
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Bldg. 93, Naval Station
Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779440027
Status: Unutilized
Reason: Extensive deterioration.

Kentucky

Bldg. 02215, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440258
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02217, Fort Campbell
Ft. Campbell Co: Christian KY 4223–
Landholding Agency: Army
Property Number: 219440259
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02252, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440260
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02258, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440261
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02262, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number 219440262
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02540, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440263
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02548, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440264
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02710, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440265
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02951, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440266
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05608, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440267
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05610, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440268
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05912, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440269
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05924, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440270
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05948, Fort Campbell
Fort Campbell Co: Christian KY 42223–

Landholding Agency: Army
Property Number: 219440271
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 05954, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440272
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 06108, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440273
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 06117, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440274
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 06411, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440275
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 06414, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440276
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 06415, Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219440277
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. N–3207, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440294
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–3208, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440295
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–3507, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440296
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–4007, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440297
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–4507, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440298
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–3346, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440299
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–5574, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440300
Status: Unutilized
Reason: Extensive deterioration.

Bldg. H–1941, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440301
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–2812, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440302
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3307, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440303
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3411, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440304
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3505, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440305
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3511, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440306
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3705, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440307
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2–3808, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219440308
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

Bldg. P–2305, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440309
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–3741, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440310
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. T–3716, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440311
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. T–3717, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440312
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. T–3742, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440313
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. T–3743, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440314
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Bldg. T–3746, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440315
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

Bldg. T–3747, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440316
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Texas

Bldg. T–1171
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440439
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201–
Landholding Agency: Army
Property Number: 219440317
Status: Unutilized
Reason: Secured area.

[FR Doc. 94–31404 Filed 12–22–94; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket Nos. N-94-3688; FR-3589-N-03 and N-94-3689; FR-3590-N-02]

Announcement of Funding Awards for Supportive Housing for the Elderly and Persons with Disabilities FY 1994

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department as a result of competitions for funding under the following two notices of funding availability: Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities. This announcement contains the names and addresses of the award winners and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, room 6130, 451 Seventh Street SW, Washington, DC 20410-0500; telephone (202) 708-4542 or (202) 708-4594 (TDD). (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended section 202 of the Housing Act of 1959. Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance is provided as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994 (Pub. L. 103-124, enacted October 28, 1993 (Fiscal Year 1994 Appropriations Act) provides for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959 (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended.

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (and as amended by the Housing and Community Development Act of 1992), authorized a new supportive housing program for persons with disabilities and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). The assistance is provided as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation, of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103-124, enacted October 28, 1993, (Fiscal Year 1994 Appropriations Act) provides for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities as authorized by section 811 of the NAHA. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the Fiscal Year 1994 Appropriations Act. It should be noted that although section 623 of the HCD Act of 1992 authorizes tenant-based assistance for persons with disabilities, appropriations have not been provided.

The purposes of the competitions were to (1) provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand supportive services to the elderly; and (2) provide assistance to nonprofit organizations to expand the supply or supportive housing for persons with disabilities.

The 1994 awards announced in this Notice were selected for funding in competitions announced in the **Federal Register** notices published on February 2, 1994 (59 5036 and 5048). A total of $518,197,100 of capital advances, with $26,267,000 in project rental assistance was awarded to Supportive Housing for the Elderly. A total of $172,570,500 of capital advances, with $9,633,600 in project rental assistance was awarded to Supportive Housing for Persons with Disabilities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and the amount of those awards, as set out at the end of this Notice.

Dated: December 14, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
REGION: BOSTON								
State: Connecticut								
Hartford	017–EE010/CT26–S941–002, AHEPA National Housing, 7202 North Shadeland Ave., Indianapolis, IN 46250.	Groton, CT	M	1	1	40	3,192,200	152,100
Hartford	017–EE011/CT26–5941–003, New Samaritan Corp., 165 Clintonville Road, North Haven, CT 06473.	Wolcott Town, CT.	M	1	1	40	3,209,400	148,400
Hartford	017–EE012/CT26–5941–004, Shiloh Baptist Church, 346 Butternut Street, Middletown, CT 06457.	Middletown, CT	M	2	1	41	3,289,200	152,100
Subsubtotal					3	121	9,690,800	452,600
State: Massachusetts								
Boston	023–EE041/MA06–S941–001, Chinese Economic Development, 65 Harrison Avenue, Boston, MA 02111.	Boston, MA	M	5	1	41	2,890,800	170,000
Boston	023–EE042/MA06–S941–002, Wollaston Lutheran Church, 550 Handcock Street, Quincy, MA 02169.	Quincy, MA	M	1	1	75	5,951,700	314,300
Boston	023–EE044/MA06–S941–004, Housing Allowance Project, 322 Main Street, Springfield, MA 01105.	Wales, MA	NM	1	1	20	1,362,400	80,800
Boston	023–EE046/MA06–S941–006, The Community Builders, 95 Berkeley Street, Boston, MA 02118.	Methuen, MA	M	1	1	44	3,400,800	186,900
Boston	023–EE047/MA06–S941–007, The Community Builders, 95 Berkeley Street, Boston, MA 02116.	Holliston, MA	M	1	1	75	5,934,600	318,600
Subsubtotal					5	255	19,540,300	1,070,600
State: Maine								
Manchester	024–EE012/ME36–S941–001, Group Home Foundat., PO Box 227, Belfast, ME 04915.	Belfast, ME	NM	1	14	880,500	44,300	
Manchester	024–EE014/ME36–S941–002, Kittery Elior Housing Corp., PO Box 83, Eliot, ME 03903.	Eliot Town, ME	M	1	1	41	2,464,700	129,600

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Subsubtotal	.....	.....	.....	.....	2	55	3,345,200	173,900
State: New Hampshire								
Manchester	024–EE013/NH36–S941–001, National Council of Senior Citizens, 1331 F Street, N.W., Washington, DC 20004.	Claremont, NH	NM	1	1	40	2,481,700	120,100
Manchester	024–EE015/NH36–S941–002, Crotched Mountain Foundation, 1 Verney Dr., Greenfield, NH 03047.	Whitefield, NH	NM	1	1	24	1,452,700	72,600
Subsubtotal	.....	.....	.....	.....	2	64	3,934,400	192,700
State: Rhode Island								
Providence	016–EE008/RI43–S941–001, AHEPA, 1909 Q Street NW., Washington, DC 20009.	New Port, RI....	NM	1	1	40	3,124,600	150,500
Providence	016–EE009/RI43–S941–002, OMNI Development Corp., 391 Pine Street, Providence, RI 02903.	Providence, RI	M	2	1	57	4,361,000	214,400
Providence	016–EE010/RI43–S941–003, Church Community Housing, 50 Washington Square, Newport, RI 02840.	Middletown, RI	NM	1	1	50	3,922,600	188,100
Subtotal	.....	.....	.....	.....	3	147	11,408,200	553,000
Subtotal	.....	.....	.....	.....	15	642	47,918,900	2,442800
REGION: NEW YORK								
State: New Jersey								
Newark	03–EE024/NJ39–SS941–002, The United Methodist Homes of NJ., 3311 Highway 33, P.O. Box, Neptune, NJ 07754.	Plainfield, NJ ..	M	1	1	58	4,665,600	257,900
Newark	031–EE025/NJ39–S941–003, Episcopal Diocese of Newark, 24 Rector Street, Newark, NJ 07102.	Carlstadt, NJ ..	M	1	1	72	5,603,500	321,200
Newark	031–EE026/NJ–S941–004, United Methodist Church of Red Bank, 247 Broad Street, Red Bank, NJ 07701.	Red Bank, NJ .	M	2	2	62	5,907.000	372,500
Newark	031–EE028/NJ39–S941–006, The Presbyterian Homes of NJ Foundation, PO Box 2184, Prince, NJ 08543.	Howell Twp., NJ.	M	1	1	86	6,909,600	384,500
Subsubtotal	.....	.....	.....	.....	4	277	22,084,700	1,235,000

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
			State: New York					
New York	012-EE118/NY36-S941-011, Westside Federation for Senior Housing, 2345 Broadway, New York, NY 10024.	Manhattan, NY	N	1	1	55	4,481,200	252,900
New York	012-EE121/NY36S941-041, St. Vincent Medical Center, 355 Bard Avenue, Staten Island, NY 10310.	Staten Island	M	1	1	80	6,510	489,900
New York	012-EE124/NY36-S941-017, New Direction in Community Revitalization, 1650 Selwyn Avenue, Bronx, NY 10457.	Bronx, NY	M	4	1	80	6,510,200	369,900
New York	012-EE125/NY36-36-S941-018, Roman Catholic Diocese of Rockville Center, 50 North Park Ave., Rockville Centre, NY 11570.	Islip, NY	M	1	1	125	9,970,600	580,500
New York	012-EE126/NY36-S941-091, JASA and Jewish Home for aged, 40 W 68 St, New York, NY 10023.	Bronx, NY	M	1	1	64	5,211600	458,800
New York	012-EE129/NY36-S941-022, 116th St. Block Assoc. & Inst for Pr Eld., 23 E 115 St, New York 10029.	Manhattan, NY	M	4	1	99	8,052,200	458,800
New York	012-EE131/NY-S941-024, East MY Urban Youth Corp., 539 Alabama Ave., Brooklyn, NY 11207.	Brooklyn, NY	M	2	1	54	4,130,700	248,200
New York	012-EE137/NY36-S941-030, West Harlem Group Assistance, 1528 Armsterdam Ave., New York, NY 10031.	Manhattan, NY	M	2	1	66	5,270,300	305,100
New York	012-EE140/NY36-S941-033, Northeast Brooklyn Housing Dev. Corp., 132 Ralph Ave., Broklyn, Ny 11233.	Brooklyn, NY	M	2	1	55	4,481,200	252,900
New York	012-EE142/NY36-S941-035, Linroc Comm Svc Corp., Linden Blvd At Brookdale, Brooklyn, Ny 11212.	Bro9klyn, Ny	M	1	1	87	7,078,300	402,600
Buffalo	014-EE064/NY06-S941-003 National Church Resiodences, 2335 Nothbank Dr., Columbus, OH 43220.	Wheatfield Township, NY.	M	1	1	59	4,085,000	207,000

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Buffalo	014–EE065/NY06–S941–004, Roman Cath Diocese of Albany, 40 North Main Street, Albany, NY 12203.	Bethlehem, NY	M	M	1	50	3,277,300	179,100
Buffalo	014–EE068/NY06–S941–007, Town of Plattsburgh Hsg Coalition, Inc., 152 Banker Rd, Plattsburgh, NY 12901.	Morrisonville, NY.	NM	1	1	24	1,504,800	87,800
Buffalo	014–EE070/NY06–S941–009, Loretto Mgmt Corp., 700 E. Brighton Ave., Syracuse, NY 13205.	Syracuse, NY	M	1	1	51	3,567,700	182,700
Buffalo	014–EE074/NY06–S941–013, The Dioc of Buffalo, 795 Main St., Buffalo, NY 14202.	Tonawanda, NY.	M	1	1	50	3,464,100	174,900
Buffalo	014–EE078/NY06–S941–017, AHEPA Natl Hsg Cor., 7202 N Shadeland Ave., Indianapolis, IN 46250.	Cheektowaga, NY.	M	1	1	50	3,449,200	178,500
Subsubtotal					16	1,049	81,044,600	4,545,800
Subtotal					20	1,326	103,129,300	5,780,800
State: Maryland								
Washington	000–EE026/MD39–S941–001, Allegheny East Conference 7th Day Adventists, Pine Forge Road, Pine Forge, PA 19548.	Chillum, MD	M	2	1	49	3,280,700	163,900
Baltimore	052–EE008/MD06–S941–001, Associated Catholic Charities, 320 Cathedral Street, Baltimore, MD 21201.	Towson, MD	M	1	1	82	5,268,500	257,500
Baltimore	052–EE009/MD06–S941–002, Shore Up Inc., P.O. Box 430, Salisbury, MD 21801.	Princess Anne, MD.	NM	2	1	20	1,228,100	62,900
Subsubtotal					3	151	9,777,300	484,300
State: Pennsylvania								
Pittsburgh	033–EE041/PA28–S941–002, H.A.N.D.S, Inc., 139 East 12th Street, Erie PA 16501.	Meadville, PA	NM	1	1	20	1,189,400	57,000
Pittsburgh	033–EE046/PA28–S941–007, National Council of Senior Citizens, 1331 F St, NW., Washington, DC 20004.	Mount Lebanon PA.	M	1	1	59	3,684,400	165,300

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Pittsburgh	033–EE050/PA28–S941–011, National Church Residences, 2335 North Bank Road, Columbus, OH 43220.	Sharpsburg, PA.	M	1	1	44	2,751,100	122,500
Pittsburgh	033–EE051/PA28–S941–012, Presbyterian Association on Aging, 1215 Hulton Rd., Oakmont, PA 15139.	Slippery Rock Twp, PA.	NM	1	1	40	2,287,000	111,100
Pittsburgh	033–EE052/PA28–S941–013, Lutheran Service Society of Western PA., 3171 Babcock Blvd, Pittsburgh, PA 15237.	Cherry Tree Twp, PA.	NM	1	1	20	1,189,400	57,000
Philadelphia	034–EE027/PA26–S941–007, The Salvation Army, 440 West Nyack Road, West Nyack, NY 10994.	Philadelphia, PA.	M	1	1	50	3,583,000	195,800
Philadelphia	034–EE028/PA26–S941–008, Phila Presbytery Homes, Inc., One Aldwyn Center, Villanova, PA 19085.	Philadelphia, PA.	M	1	1	60	4,241,800	235,700
Philadelphia	034–EE029/PA26–S942–001, The Lutheran Welfare Services of NE PA., 901 Stacie Drive, Hazelton, PA 18201.	Stroud Twp, PA.	NM	1	1	30	1,836,200	108,300
Philadelphia	034–EE031/PA26–S941–010, Pinn Memorial Baptist Church, 54th St. & Wynnefield Ave., Philadelphia, PA 19131.	Philadelphia, PA.	M	2	1	40	2,854,000	155,700
Philadelphia	034-EE036/PA26-S941-015, Hispanic Assn of Contractors/ Episocopal Hosp., 2951-27 N. 5th Street, Phila, PA 19133.	Philadelphia, PA.	M	4	1	53	3,751,500	207,800
Subsubtotal					10	416	27,367,800	1,416,200
State: Virginia								
Richmond	051-EE028/VA36-S941-002, Virginia Mountain Housing, Inc., 930 Cambria Street, NE, Christiansburg, VA 24073.	Newport News, VA.	M	1	1	40	2,189,500	109,600
Richmond	051-EE031/VA36-S941-005, John H. Wellons Foundation, PO Box 1254, Dunn, NC 28335.	Chase City, VA	NM	1	1	35	1,821,200	98,300

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Richmond	051-EE033/VA36-S941-007, Golden Age Christian Home, Inc., P.O. Box 247, Mechanicsville, VA 23111.	Roanoke, VA	M	1	1	45	2,341,600	126,400
Subsubtotal					3	120	6,352,300	334,300
State: West Virginia								
Charleston	045-EE005/WV15-S941-001, Human Resource Dev. and Employment, Inc., 1644 Mileground Morgantown, WV 26505.	South Charleston, WV.	M	1	1	43	2,484,300	127,000
Subsubtotal					1	43	2,484,300	127,000
Subtotal					17	730	45,981,700	2,361,800
REGION: ATLANTA								
State: Alabama								
Birmingham	062-EE018/AL09-S941-001, AHEPA National Housing Corporation, 7202 North Shadeland Ave. Suite 100, Indianapolis, IN 46250.	Montgomery, AL.	M	1	1	71	3,505,300	178,600
Birmingham	062-EE019/AL09-S941-002, Volunteers of America of South Alabama Inc., 600 Azalea Road, Mobile, AL 36609.	Brewton, AL	NM	1	1	38	1,802,800	93,100
Subsubtotal					2	109	5,308,100	271,700
State: Florida								
Jacksonville	066-EE028/FL29-S941-009, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Fort Myers, FL	M	1	1	60	3,767,000	156,400
Jacksonville	066-EE030/FL29-S941-011, Noah Development Corporation, 601 Covenant Drive, Belle Glade, FL 33430.	Belle Glade, FL	M	2	1	70	4,606,300	182,900
Jacksonville	066-EE035/FL29-S941-022, Codec Inc., 300 SW 12th Avenue Suite A, Miami, FL 33130.	Miami, FL	M	4	1	110	7,193,100	288,900
Jacksonville	067-EE047/FL29-S941-020, United Church Homes, 170 East Center Street, Marion, OH 43302.	Dunedin, FL	M	1	1	70	3,822,800	161,500
Jacksonville	067-EE049/FL29-S941-029, Broadway Towers Inc., 1800 Century Blvd NE Suite 1260, Atlanta, GA 30345.	Vero Beach, FL.	NM	1	1	40	2,094,400	93,600

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Jacksonville	067-EE050/FL29-S941-030, Broadway Towers Inc., 1800 Century Blvd NE Suite 1260, Atlanta, GA 30345.	Vero Beach, FL.	NM	1	1	40	2,094,400	93,600
Subsubtotal					6	390	23,578,000	976,900
State: Georgia								
Atlanta	061-EE26/GA06-S941-005, Quality Living Services, 4001 Danforth Road SW, Atlanta, GA 30331.	Atlanta, GA	M	2	1	64	2,171,500	161,000
Atlanta	061-EE028/GA06-S941-007, Buckingham Place Church of God, 103 Buckingham Place, Brunswick, GA 31525.	Glynn County, GA.	NM	1	1	40	2,067,100	99,700
Atlanta	061-EE029/GA06-S941-008 AHEPA National Housing Corporation, 7202 North Shadeland Ave., Indianapolis, IN 46250.	De KKalb County, GA.	M	1	1	68	3,495,500	173,700
Subsubtotal					3	172	7,734,100	434,400
State: Kentucky								
Louisville	083-EE035/KY36-S941-001, Christian Church Homes of Kentucky Inc., 12700 Shelbyville Road, Suite 1000, Louisville, KY 40243.	Owensboro, KY.	M	1	1	54	2,994,700	146,400
Louisville	083-EE038/KY36-S941-004 Lee County Constant Care Inc., 137 E. Main Street, Beattyville, KY 41311.	Beattyville, KY	NM	1	1	6	337,400	16,300
Louisville	083-EE039/KY36-S941-005, Christian Church Homes of Kentucky, Inc., 12700 Shelbyville Road, Suite 1000, Louisville, KY 40243.	Taylorsville, KY	NM	1	1	20	1,122,700	54,300
Subsubtotal					3	80	4,454,800	217,000
State: Mississippi								
Jackson	065-EE011/MS26-S941-001, Volunteers of America, 3939 North Causeway Blvd., Metairie, LA 70002.	Jackson, MS	M	1	1	64	3,257,200	162,200
Jackson	065-EE012/MS26-S941-002, United Church Homes, 170 East Center Street, Marion, OH 43302.	Jackson, MS	M	1	1	64	3,257,200	162,200

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Subsubtotal	.....	.....	.....	.....	2	128	6,514,400	324,400
State: North Carolina								
Greensboro	053–EE035/NC19–S941–002, First Bapist Church, 504 W. Second Street, Lumberton, NC 28358.	Lumberton, NC	NM	2	1	41	2,650,300	108,500
Greensboro	053–EE038/NC19–S941–005, Kiwanis Club-Spruce Pine/Shelby Lions Club, 405 Walnut Ave., Spruce Pine, NC 28777.	Spruce Pine, NC.	NM	1	1	25	1,591,800	67,800
Greensboro	053–EE042/NC19–S941–009, United Church Retirement Homes, 100 Leonard Ave., Newton, NC 28658.	Burlington, NC	M	1	1	40	2,515,900	108,500
Greensboro	053–EE045/NC19–S941–012, Downtown Housing Improvement Corporation, P.O. Box 2185, Raleigh, NC 27602.	Wake Forest, NC.	M	1	1	41	2,759,000	108,500
Subsubtotal	.....	.....	.....	.....	4	147	9,517,000	393,300
State: Puerto Rico								
Caribbean	056–EE020/RQ46–S941–005, Primera Iglesia Bautista, Box 66, Carolina, PR.	Carolina, PR ...	M	4	1	40	2,285,900	100,700
Subsubtotal	.....	.....	.....	.....	1	40	2,285,900	100,700
State: South Carolina								
Columbia	054–EE016/SC16–S941–004, York Co. Council on Aging Inc., P.O. Box 11519, Rock Hill, SC 29731.	Rock Hill, SC ..	M	1	1	51	2,776,600	128,300
Subsubtotal	.....	.....	.....	.....	1	51	2,776,6900	128,300
State: Tennessee								
Nashville	081–EE015/TN40–S941–001, Catholic Diocese of Memphis, 85 North Cleveland, Memphis, TN 38104.	Humboldt, TN .	NM	1	1	27	1,336,500	66,500
Nashville	081–EE016/TN40–S941–002, Bethel AME Church & Beth Reach Inc., 2011 Alcy Road, Memphis, TN 38114.	Memphis, TN ..	M	2	1	62	3,197,900	155,800
Nashville	086–EE010/TN43–S941–002, Douglas-Cherokee Economic Authority, P.O. Box 1281, Morristown, TN 37816.	Sparta, TN	NM	1	1	24	1,171,200	57,600

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Knoxville	087-EE015/TN37-S941-002, Orchard Knob Missionary Bapt Church, 1734 E Third St., Chattanooga, TN 37404.	Chattanooga, TN.	M	2	1	44	2,272,700	107,400
Subsubtotal					4	157	7,978,300	387,300
Subtotal					26	1274	70,147,200	3,234,000
REGION: CHICAGO								
State: Illinois								
Chicago	071-EE062/IL06-S941-004, Catholic Charities, 1571 W. Ogden Ave., Lagrange Pk, IL 60525.	Chicago, IL	M	1	1	77	5,535,600	236,100
Chicago	071-EE067/IL06-S941-009, Bethel New Life, Inc., 367N Karlov, Chicago, IL 60626.	Chicago, IL	M	2	1	125	8,851,400	365,100
Chicago	071-EE077/IL06-S941-019, Ebenezer AME Church, 1109 Emerson St., Evanston, IL 60201.	Evanston, IL	M	2	1	76	5,463,900	233,000
Chicago	071-EE079/IL06-S941-021, Franciscan Ministries, P.O. Box 667-26 W 171 ROOS, Wheaton, IL 60189.	Aurora, IL	M	1	1	80	5,735,200	248,400
Chicago	071-EE084/IL06-S941-026, Hispanic Housing Dev/Casa Central, 65 E. Wacker Drive, Chicago, IL 60601.	2451 N. Sacramento, IL.	M	4	1	41	2,954,700	124,200
Subsubtotal					5	399	2,854,800	1,226,800
State: Indiana								
Indianapolis	073-EE039/IN36-S941-004, Ancilla Systems Inc., 1000 South Lake Park Ave., Hobart, IN 46342.	Gary, IN	M	1	1	58	3,386,000	164,600
Indianapolis	073-EE042/IN36-S941-007, United Church Homes, Inc., 170 East Center Street, Marion, OH 43302.	Bremen, IN	NM	1	1	35	2,048,200	98,200
Indianapolis	073-EE044/IN36-S941-009, NCR, 2335 North Bank Drive, Columbus, OH 43220.	Indianapolis, IN	M	1	1	54	3,153,300	153,000
Indianapolis	073-EE045/IN36-S941-010, Light of the World, 5640 E. 38th St., Indianapolis, IN 46218.	Indianapolis, IN	M	2	1	50	2,908,200	141,400
Subsubtotal					4	197	11,495,700	557,200

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
State: Michigan								
Detroit	044–EE025/M128–S941–004, Volunteers of America, 3939 No. Causeway Blvd., Metairie, LA 70002.	Detroit, MI	M	1	1	75	4,908,800	239,600
Detroit	044–EE026/M128–S941–005, Presbyterian Village, 25300 W. Six Mile Road, Redford, MI 48240.	Detroit, MI	M	1	1	52	3,256,500	165,100
Grand Rapids	047–EE013/M133–S941–004, Trinity Village NP, 2140 Valley Street, Muskegon, MI 49444.	Muskegon, MI	M	2	1	46	2,419,300	121,200
Subsubtotal					3	173	10,584,600	525,900
State: Minnesota								
Minn/St. Paul	092–EE019/MN46–S941–001, Mother of Mercy NH, 230 Church Street, Albany, MN 56307.	Albany, MN	M	1	1	41	2,634,100	125,700
Minn/St. Paul	092–EE020/MN46–S941–002, Earthstar Project, 1885 University Avenue, St. Paul, MN 55104.	St. Paul, MN	M	3	1	43	2,908,100	131,900
Minn/St. Paul	092–EE021/MN46–S941–003, Bethesda Homes, 901 Willmar Avenue South, Willmar, MN 56201.	Willmar, MN	NM	1	1	40	2,515,900	122,500
Subsubtotal					3	124	8,058,100	380,100
State: Ohio								
Cleveland	042–EE051/OH12–S941–003, National Church Residences, 2335 Northbank Drive, Columbus, OH 43220.	Ravenna, OH	M	1	1	51	3,186,700	161,900
Cleveland	042–EE052/OH12–S941–004, VOA, 3939 N. Causeway Blvd., Metairie, LA 70002.	Tiffin, OH	NM	1	1	20	1,044,800	61,600
Cleveland	042–EE056/OH12–S941–008, AHEPA National Housing, 7202 N. Shadeland Avenue, Indianapolis, IN 46250.	Boardman, OH	M	1	1	63	3,919,900	204,000
Cleveland	042–EE058/OH12–S941–010, St. Alexis Hospital, 5163 Broadway Avenue, Cleveland, OH 44127.	Cleveland, OH	M	1	1	50	3,229,400	161,900
Columbus	043–EE035/OH16–S941–004, NCR, 2335 North Bank Drive, Columbus, OH 43220.	Westerville, OH	M	1	1	40	2,222,100	111,900

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Columbus	043–EE037/OH16–S941–006, Marysville Housing, 376 Rosehill Drive, Marysville, OH 43040.	Marysville, OH	NM	1	1	34	1,920,000	97,500
Cincinnati	046–EE020/OH10–S941–002, Baptist Home and Center, 2373 Harrison Avenue, Cincinnati, OH 45211.	Cincinnati, OH	M	1	1	42	2,442,800	122,100
Cincinnati	046–EE023/OH10–S941–005, Warren County Community Service, 570 North State Route 741, Lebanon, OH 45036.	Morrow, OH	M	1	1	40	2,326,500	116,200
Cincinnati	046–EE024/OH10–S941–006, Eastway Corporation, 600 Wayne Avenue, Dayton, OH 45410.	Eaton, OH	NM	1	1	7	389,100	20,400
Subsubtotal					9	347	20,681,300	1,057,500
State: Wisconsin								
Milwaukee	075–EE021/WI39–S941–001, Arlington Poynette, 514 E Grant Street, Poynette, WI 53955.	Poynette, WI	NM	1	1	30	1,502,900	89,800
Milwaukee	075–EE022/WI39–941–002, Impact Seven Inc., 100 Digital Drive, Clear Lake, WI 54005.	Minocqua, WI	NM	1	1	20	937,300	59,900
Milwaukee	075–EE023/WI39–S941–003, Franciscan Ministries, P.O. Box 667, Wheaton, IL 60189.	Kenosha, WI	M	1	1	60	3,005,800	179,500
Milwaukee	075–EE024/WI39–S941–004, Salvation Army, 10 W Algonquin Road, Des Plaines, IL 60016.	Oak Creek, WI	M	1	1	40	2,053,200	116,700
Milwaukee	075–EE025/WI39–S941–005, Holie Inc., 6101 S 51 St, Greendale, WI 53129.	West Milwaukee, WI.	M	1	1	40	2,053,200	116,700
Subtotal					5	190	9,552,400	562,600
Subtotal					29	1430	88,912,900	4,310,100
REGION: FORT WORTH								
State: Arkansas								
Little Rock	082–EE050/AR37–S941–001, NCR, 2335 N. Bank Dr., Columbus, OH 43220.	Marion, AR	M	1	1	52	2,362,200	118,400
Little Rock	082–EE050/AR37–S941–005, White River AAA, P.O. Box 2637, Batesville, AR 72503.	Sulphur Rock, AR.	NM	1	1	16	723,900	37,200

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Little Rock	082–EE055/AR37–S941–006, AAA of SE Ark., P.O. Box 8569, Pine Bluff, AR 71611.	Fordyce, AR	NM	1	1	16	723,900	37,200
Little Rock	082–EE057/AR37–S941–008, Diocese of Little Rock, 2415 N. Tyler, Little Rock, AR 72207.	Hot Spring, AR	NM	1	1	20	904,900	46,500
Subtotal					4	104	4,714,900	239,000
State: Louisiana								
New Orleans	064–EE034/LA48–S941–005, Goodwill Industries, P.O. Box 81725, Lafayette, LA 70589.	Lafayette, LA	M	1	1	41	1,997,700	109,600
New Orleans	064–EE034/LA48–S941–006, Diocese of Lafayette, 1408 Carmel Ave., Lafayette, LA 70501.	New Iberia, LA	NM	1	1	22	1,076,500	58,800
New Orleans	064–EE037/LA48–S941–008, Ouachita Council on Aging, 1209 Olliver Rd., Monroe, LA 71207	Monroe, LA	M	1	1	41	1,917,800	99,200
New Orleans	064–EE038/LA48–S941–009, Presbytery of South Louisiana, 928 Rodin Drive, Baton Rouge, LA 70806.	Bogalusa, LA	NM	1	1	22	1,083,700	58,800
New Orleans	064–EE039/LA48–S941–010, Acadia Council on Aging, P.O. Box 1482, Crowley, LA 70527.	Mermentau, LA	NM	1	1	22	1,076,500	58,800
Subtotal					5	148	7,152,200	385,200
State: Oklahoma								
Oklahoma City	118–EE013/OK56–S941–004, First Baptist Church of North Tulsa, 1414 N. Greenwood, Tulsa, OK 74106.	Tulsa, OK	M	2	1	56	2,752,200	141,500
Oklahoma City	118–EE015/OK56–S941 007, Barlesville Uptown Civitan Club, P.O. Box 1293, Bartlesville, OK 74006.	Bartlesville, OK	NM	1	1	20	1,015,500	48,900
Subtotal					2	76	3,767,700	190,400
State: Texas								
Fort Worth	113–EE008/TX21–S941–004, National Benevolent Association, 11780 Borman Drive, Suite 200, St. Louis, MO 63146.	San Angelo, TX.	M	1	1	74	3,603,400	200,700

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Houston	114–EE028/TX24–S941–005, National Benevolent Association, 11780 Borman Drive, Suite 200, St. Louis, MO 63146–4157.	Houston TX	M	1	1	47	2,590,000	126,500
Houston	114–EE029/TX24–S951–006, AHEPA National Hsg. Corp., 7202 N. Shadeland Ave. #100, Indianapolis, IN 46250.	Houston, TX	M	1	1	54	2,754,000	145,300
San Antonio	115–EE029/TX59–S941–004, Amigos Del Valle, 1116 N. Conway Avenue, Mission, TX 78572.	Mission, TX	M	4	1	59	2,628,400	147,300
Fort Worth	133–EE006/TX21–S594–102, Evang. Lutheran Good Samaritan Society, 1000 West Avenue North, Sioux Falls, SD 57117.	Odessa TX	M	1	1	41	1,957,700	104,500
Fort Worth	133–EE008/TX21–S941–007, Bienvivir Senior Health Services, 940 N. Carolina, El Paso, TX 79915–2724.	El Paso, TX	M	4	1	41	1,931,100	104,500
Fort Worth	133–EE010/TX21–s941–009, Midland Hispanic Chammber of Commerce, 1410 N. Lamesa Rd., Midland, TX 79702.	Midland, TX	M	4	1	41	1,971,000	104,500
Subsubtotal					7	357	17,435,600	933,399
Subtotal					18	685	33,070,400	1,748,200
REGION: KANSAS CITY								
State: Iowa								
Des Moines	074–EE014/IA05–S941–001, Sunset Retirement, 111 East 20th Street, Spencer, IA 51301.	Spencer, IA	NM	1	1	12	658,200	31,600
Des Moines	074–EE016/IA05–S941–300, Holy Spirit Retirm, 1701 25th Street, Sioux City, IA 51103.	Sioux City, IA	M	1	1	55	3,016,7700	14,200
Subsubtotal					2	67	3,674,900	173,800
State:								
Kansas City	084–EE019/M016–S941–004, Community Dev. Corporation of Kansas City, 2420 East Linwood Blvd., Kansas City, MO 64109.	Kansas City, MO.	M	2	1	60	3,449,200	176,600

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
St Louis	084–EE021/M036–S941–001, National Church Residence, 2335 North Bank Drive, Columbus, OH 43220.	St. Charles, MO.	M	1	1	43	2,556,300	126,900
St. Louis	085–EE023/M036–S941–003, Mercy Seat Baptist, 4424 Washington Avenue, St. Louis, MO 63108.	St. Louis, MO	M	2	1	43	2,556,300	126,900
Subsubtotal					3	146	8,561,800	430,400
State: Nebraska								
Omaha	103–EE011/NE26–S941–002, Mid-Nebraska Comm., 16 West 11th Street, Kearney, NE 68848.	Gothenburg, NE.	NM	1	1	16	755,000	42,500
Omaha	103–EE011/NE26–S941–003, Evangelical lutheran Good Samaritan Society, P.O Box 5038 Sioux Falls, SD 57117.	Hastings, NE	NM	1	1	24		
1,148,000	63,700.							
Subsubtotal					2	40	1,903,000	106,200
Subtotal					7	253	14,139,700	710,400
REGION: DENVER State: Colorado								
Denver	101–EE012/CO99–S941–001, Kemme Family Fnd, 4254 W 14th Street, Greeley, CO 80634.	Greeley, CO	M	1	1	40	2,325,400	111,900
Denver	101–EE018/CO99–S941–007, Archuleta Hsg Corp., 713 San Juan Ave., Pagosa Springs, CO 81147.	Pagosa Springs, CO.	NM	1	1	12	833,800	34,500
Denver	101–EE019/CO99–S941–008, Frannciscan Ministr, P.O. Box 667,.	Westminster, CO.	M	1	1	60	3,469,500	169,200
Subsubtotal					3	112	6,628,700	315,600
Subtotal					3	112	6,628,700	315,600
REGION: SAN FRANCISCO State: Arizona								
Phoenix	123–EE026/AZ20–S941–002, Human Action for Chandler, Inc., PO Box 1776, Chandler, AZ 85244.	Yavapai County, AZ.	NM	1	1	20	1,028,800	50,400
Phoenix	123–EE033/AZ20–S941–009, Christian Care Management, Inc., 2002 West Sunnyside Drive, Phoenix, AZ 85029.	Mesa, AZ	M	1	1	65	3,418,200	169,700

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Phoenix	123-EE034/AZ20-S941-010, Christian Care Management, Inc., 2002 West Sunnyside Drive, Phoenix, AZ 85029.	Cottonwood, AZ.	NM	1	1	20	1,039,400	50,400
Subsubtotal					3	105	5,486,400	270,500
State: California								
San Francisco	121-EE050/CA39-S941-002, Mexican American Community Services Agency, 130 North Jackson Avenue, San Jose, CA 95116.	San Jose, CA	M	4	1	60	4,540,800	239,800
San Francisco	121-EE052/CA39-S941-004, Evergreen Batist Church, Inc., 408 West MacArthur Blvd., Oakland, CA 94609.	Oakland, CA	M	2	1	40	3,178,600	162,600
San Francisco	121-EE054/CA39-S941-006, Christian Church Homes of Northern Calif., 303 Hegenberger Road, Oakland, CA 94621.	Brentwood, CA	M	1	1	41	2,943,300	162,600
San Francisco	121-EE059/CA39-S941-011, Chinese Community Housing Corporation, 1525 Grant Avenue, San Francisco, CA 94103.	San Francisco, CA.	M	5	1	105	7,627,600	422,600
San Francisco	121-EE061/CA39-S941-013, Spanish Speaking Unity Council, Inc., 1900 Fruitvale Avenue, Suite 2A, Oakland, CA 94601.	Oakland, CA	M	4	1	68	5,420,900	272,300
Los Angeles	121-EE057/CA16-S941-003, First Presbyterian Church of El Centro, 586 Orange Avenue, El Centro, CA 92243.	El Centro, CA	NM	1	1	20	1,535,200	70,600
Los Angeles	122-EE058/CA16-S941-004, First Presbyterian Church of El Centro, 586 Orange Avenue, El Centro, CA 92243.	El Centro, CA	NM	1	1	20	1,535,200	70,600
Los Angeles	122-EE060/CA16-S941-006, New Hope Baptist Church of Los Angeles, 5200 South Central Avenue, Los Angeles, CA 90011.	Los Angeles, CA.	M	2	1	50	3,822,400	187,900
Los Angeles	122-EE066/CA16-S941-012, TELACU, 5400 East Olympic Boulevard, Suite 300, Los Angeles, CA 90022.	Los Angeles, CA.	M	4	1	84	6,476,400	318,200

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
Los Angeles	122–EE069/CA16–S941–015, Retirement Housing Foundation, 5150 East Pacific Coast Highway, Suite 600, Long Beach, CA 90804.	Los Angeles, CA.	M	1	1	46	3,093,900	176,400
Los Angeles	122–EE070/CA16–S941–016, Mercy-Charities, Housing California, 1028A Howard Street, San Francisco, CA 94103.	Oxnard, CA	M	1	1	41	3,177,700	153,400
Los Angeles	122–EE075/CA16–S941–021, Jewish Federation Council of Greater LA, 6505 Wilshire Boulevard, Los Angeles, CA 90048.	Los Angeles, CA.	M	1	1	55	4,257,100	207,000
Los Angeles	122–EE076/CA16–S941–022, Jewish Federation Council of Greater LA, 6505 Wilshire Boulevard, Los Angeles, CA.	Los Angeles, CA 90048.	M	1	1	75	5,799,100	283,700
Los Angeles	122–EE078/CA16–S941–024, B'nai B'rith Housing, Inc., 1640 Rhode Island Avenue, N.W., Washington, DC 20036.	North Hollywood, CA.	M	1	1	91	7,032,700	345,000
Los Angeles	122–EE081/CA16–S941–027, Association National Pro Personas Mayoces, 3325 Wilshire Boulevard, Suite 800, Los Angeles, CA 90010.	Los Angeles, CA.	M	4	1	88	6,801,400	333,600
Sacramento	136–EE011/CA30–S941–003, Shasta HDC/Christian Church Homes, 1933 Market Street, Suite C, Redding, CA 96001.	Redding, CA	M	1	1	62	3,941,500	205,900
Sacramento	136–EE013/CA30–S941–005, Rogue Valley Manor, 1200 Mira Mar Avenue, Medford, OR 97504.	Yreka, CA	NM	1	1	20	1,339,800	64,200
Subsubtotal					17	966	72,523,600	3,676,400
State: Hawaii								
Honolulu	140–EE009/HI10–S941–004, Big Island Housing Foundation, 714 Kandelehua Avenue, Hilo, HI 96720.	Keaau, HI	NM	5	1	20	2,351,000	82,100
Honolulu	140–EE010/HI10–S941–005, Hale Mahaolu, 200 Hina Avenue, Kahului, HI 96732.	Kahului, HI	NM	5	1	20	2,434,700	86,400
Subsubtotal					2	40	4,785,700	168,500
Subtotal					22	1,111	82,795,700	4,115,400

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–129]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
			REGION: SEATTLE					
			State: Alaska					
Anchorage	176–EE004/AK06–S941–001, St. Vincent De Paul, 8617 Teal Street, Juneau, AK 99801.	Juneau, City & Boro, AK.	NM	1	1	20	2,260,700	107,400
Subsubtotal					1	20	2,260,700	107,400
			State: Idaho					
Portland	124–EE008/ID16–S941–001, North ID Community, PO Box 1300, Coeur D'Alene, ID 83816.	Post Falls, ID	NM	1	1	20	1,060,100	56,000
Subsubtotal					1	20	1,060,100	56,000
			State: Oregon					
Portland	126–EE014/OR16–S941–001, Rogue Valley Manor, 1200 Mira Mar Avenue, Medford, OR 97501.	Reedsport, OR	NM	1	1	30	1,714,400	86,400
Portland	126–EE016/OR16–S941–003, Rogue Valley Manor, 1200 Mira Mar AVenue, Medford, OR 97501.	Medford, OR	M	1	1	40	2,313,000	115,200
Subsubtotal					2	70	4,027,400	201,600
			State: Washington					
Portland	126–EE017/OR16–S941–004, Columbia Nonprofit, 500 Omaha Way, Vancouver, WA 98661.	Vancouver, WA	M	1	1	46	2,737,700	132,400
Seattle	127–EE011/WA19–S941–001, Senior Ser Snohomi, 8225 44th Avenue W., Mukilteo, WA 98275.	Everett, WA	M	1	1	40	2,611,900	116,500
Seattle	171–EE008/WA19–S941–002, Epis Dioc, of Spokane, East 245–13th Avenue, Spokane, WA 99202.	Spokane, WA	M	1	1	60	3,308,000	172,600
Subsubtotal					3	146	8,657,600	421,500
Subtotal					7	256	16,005,800	786,500
Total					164	7,819	508,730,300	25,805,600

SECTION 202 PROGRAM FOR THE ELDERLY—FISCAL YEAR 1994 ADDITIONAL SELECTIONS

[To accompany HUD 94–166]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Capital advance amount	Rental assistance contract authority
REGION: BOSTON State: Rhode Island								
Providence	016–EE010/R143–S941–003, Church Community Housing, 50 Washington Square, Newport, RI 02840.	Middletown, RI.	NM	1	1	50	3,922,600	188,100
Subsubtotal					1	50	3,922,600	188,100
Subtotal					1	50	3,922,600	188,100
REGION: PHILADELPHIA State: Pennsylvania								
Pittsburgh	033–EE051/PA28–S941–012, Presbyterian Association on Aging, 1215 Hulton Rd., Oakton, PA 15139.	Slippery Rock Twp., PA.	NM	1	1	40	2,287,000	111,100
Subsubtotal					1	40	2,287,000	111,100
Subtotal					1	40	2,287,000	111,100
REGION: ATLANTA State: Mississippi								
Jackson	065–EE012/MS26–S941–002, United Church Homes, 170 East Center Street, Marion, OH 43302.	Jackson, MS	M	1	1	64	3,257,200	162,200
Subsubtotal					1	64	3,257,200	162,200
Subtotal					1	64	3,257,200	162,200
Total					3	154	9,466,800	461,400

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
REGION: BOSTON State: Connecticut									
Hartford	017–HD009/CT26–Q941–002, Connecticut Institute for the Blind, 120 Holcomb St., Hartford, CT 06112.	Southbury Town, CT.	NM	1	1	6	WDD	367,500	25,000
Hartford	017–HD009/CT26–Q941–002, Connecticut Institute for the Blind, 120 Holcomb St., Hartford, CT 06112.	Bethelem Town, CT.	M	1	1	6	WDD	367,000	25,400
Hartford	017–HD009/CT26–Q941–002, Connecticut Institute for the Blind, 120 Holcomb St., Hartford, CT 06112.	Bethelem Town, CT.	M	1	1	6	WDD	367,000	25,400
Hartford	017–HD009/CT26–Q941–002, Connecticut Institute for the Blind, 120 Holcomb St., Hartford, CT 06112.	Watertown, CT	M	1	1	6	WDD	367,000	25,400
Subtotal					4	24		1,470,000	101,600

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
State: Massachusetts									
Boston	023-HD051/MA06-Q941-002, The Bridge of Central Main, 10 Southwest Cutoff, Northboro, MA 01532.	Oxford, MA	M	1	1	2	CMI	155,400	9,500
Boston	023-HD052/MA06-Q941-003, Community Services Inc., 75 Litwin Lane, Chicopee, MA 01020.	Westfield, MA	M	1	1	3	WDD	280,500	14,200
Boston	023-HD053/MA06-Q941-004, Community Services, 75 Litwin Lane, Chicopee, MA 01020.	Chicopee, MA	M	1	1	4	WDD	300,200	18,900
Boston	023-HD061/MA06-Q941-011, Residential Rehab Center, 1646 Main Street Route 6, Brewster, MA 02631.	Yarmouth Town, MA.	NM	1	1	14	WDD	693,100	66,100
Subsubtotal					4	23		1,429,200	108,700
State: Rhode Island									
Providence	016-HD004/R143-Q941-001, Independent Living Authority, 51 Adelphi Avenue, Providence, RI 02906.	Providence, RI	M	1	1	30	WPD	2,691,200	125,400
Providence	016-HD007/R143-Q941-004, Blackstone Valley Arc, 115 Manton Street, Pawtucket, RI 02861.	Pawtucket, RI	M	1	1	11	WPD	959,600	46,000
Providence	016-HD009/R143-Q941-006, The Providence Center, 32 Branch Avenue, Providence, RI 02904.	Providence, RI	M	1	1	19	CMI	1,450,300	79,500
Subsubtotal					3	60		5,101,100	250,900
State: Vermont									
Manchester	023-HD009/VT36-Q941-001, Cathedral Square Corp., Three Cathedral Square, Burlington, VT 05401.	Burlington, VT	M	1	1	16	CMI	884,200	51,400
Subsubtotal					1	16		884,200	51,400
Subtotal					12	123		8,884,500	512,600
REGION: NEW YORK									
Newark	031-HD033/NJ39-Q941-007, Cheshire Home, Inc., 23 Vreeland Road, Florham Park, NJ 07932.	Hanover TWP, NJ.	M	1	1	8	WPD	423,400	40,200
Newark	031-HD034/NJ39-Q941-008, Catholic Charities Diocese of Metuchen, 288 Rues Lane, East Brunswick, NJ 08816.	Old Bridge, NJ	M	1	1	8	WPD	423,400	40,200
Newark	031-HD035/NJ39-Q941-009, Project Live, Inc., 402 Mt. Prospect Avenue, Newark, NJ 07104.	Newark, NJ	M	1	1	3	CMI	294,400	15,100
Newark	031-HD036/NJ39-Q941-010, Project Live, Inc., 402 Mt. Prospect Avenue, Newark, NJ 07104.	Newark, NJ	M	1	1	5	CMI	356,100	25,200

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Newark	031-HD037/NJ39-Q941-011, The ARC Warren County Chapter, 432 Rt. 31 South, P.O. Box, Washington, NJ 07882.	Washington, NJ.	M	1	1	8	WPD	739000	35,200
Newark	031-HD040/NJ39-Q941-014, Collaborative Support Programs of NJ, 30 Broad Street, Frehold, NJ 07728.	Eatontown, NJ	M	1	1	4	CMI	306,400	20,100
Newark	031-HD042/NJ39-Q941-016 Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Neptune City, NJ.	M	1	1	3	CMI	319,400	15,100
Newark	031-HD043/NJ39-Q941-017, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Freehold, NJ ..	M	1	1	4	CMI	337,700	20,100
Newark	031-HD044/NJ39-Q941-018, St. Joseph's Hosp., 703 Main Street, Paterson, NJ 07503.	Paterson, NJ ..	M	1	1	9	CMI	721,200	40,200
Subtotal					9	52		3,921,000	251,400
			*State: New York						
New York	012-HD019/NY36-Q941-001, Jawonio, Inc., 260 Little Tor Road, P.O. Box 312, NY 10956.	Clarkstown, NY.	M	1	1	5	WDD	451,700	26,100
New York	012-HD020/NY36-Q941-002, Camp Venture Inc., 100 Convent Road, Box 402, NY 10954.	Rockland County, NY.	M	1	1	22	WDD	1,838,000	109,300
New York	012-HD021/NY36-Q941-003, Crystal Run Village, RD # Box 98, Middletown, NY 10940.	Delaware, NY	NM	1	1	40	WDD	2,017,500	208,500
New York	012-HD022/NY36-Q941-004, Options for Community Living, 202 Main St., Smithtown, NY 11787.	Greenlawn, NY.	M	1	1	15	CMI	1,490,500	78,100
New York	012-HD024/NY36-Q941-006, Mental Health Assoc. Of Nassau County, 186 Clinton St., Hempstead, NY 11550.	Hempstead, NY.	M	1	1	25	CMI	2,464,00	124,900
New York	012-HD025/NY36-Q941-007, The Bridge, Inc., 248 W. 108th Street, New York, NY 10025.	New York-Manhattan, NY.	M	1	1	25	CMI	1,797,800	124,900
New York	012-HD027/NY36-Q941-009, The Salvation Army, 132 W 14 St., New York, NY 10011.	New York-Bronx, NY.	M	1	1	8	WDD	403,500	41,700
New York	012-HD028/NY36-Q941-010, The Salvation Army, 132, W 14 St., New York, NY 10011.	New York-Bronx, NY.	M	1	1	8	WDD	403,500	41,700
New York	012-HD029/NY36-Q941-011, The Salvation Army, 132 W 14 St., New York, NY 10011.	New York-Brooklyn, NY.	M	1	1	8	WDD	403,500	41,700
New York	012-HD030/NY36-Q941-012, The Salvation Army, 132 W 14 St., New York, NY 10011.	New York-Brooklyn, NY.	M	1	1	8	WDD	403,500	41,700

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
New York	012–HD032/NY36–Q941–014, Concern for Mental Health, PO Box 358, Medford, NY 11763.	Suffolk County, NY.	M	1	1	15	CMI	1,490,500	78,100
Buffalo	014–HD015/NY06–Q941–002, Cash Inc., 9 Broad St., Lyons, NY 14489.	Newark, NY	M	1	1	8	CMI	543,700	31,800
Buffalo	014–HD016/NY06–Q941–003, NYSARC Genesee Co., 64 Walnut St., Batavia, NY 14021.	Batavia, NY	NM	1	1	12	WDD	635,500	47,600
Buffalo	014–HD017/NY06–Q941–004, People, Inc., 1219 North Forest Rd., Williamsville, NY 14231.	Williamsville, NY.	NM	1	1	12	WDD	635,500	47,600
Buffalo	014–HD018/NY06–Q941–005, Ibero-American Act, 817 E Main St., Rochester, NY 14605.	Irondequoit, NY.	NM	4	1	8	WDD	550,900	31,800
Buffalo	014–HD021/NY06–Q941–008, UCP of Eny Inc., 7 Community Drive, Buffalo, NY 14225.	Cheektowaga, NY.	M	1	1	11	WDD	996,600	43,700
Buffalo	014–HD022/NY06–Q941–009, Crotched Mountain, 1 Verney Dr., Greenfield, NH 03047.	East Greenbush, NY.	M	1	1	24	WPD	1,522,800	97,500
Buffalo	014–HD024/NY06–Q941–0011, Crotched Mountain, 1 Verney Drive, Greenfield, NH 03047.	Troy, NY	M	1	1	4	WPD	249,500	16,300
Subsubtotal					18	258		17,880,900	1,233,000
Subtotal					27	310		21,801,900	1,484,400
REGION: PHILADELPHIA State: District of Columbia									
Washington	000–HD024/DC39–Q941–001, DC Care Consortium, 801 Pennsylvania Ave., SE, Washington, DC 20003.	Washington, DC.	M	2	1	21	WPD	2,023,300	75,900
Subsubtotal					1	21		2,023,300	75,900
State: Delaware									
Philadelphia	032–HD006/DE26–Q941–001, The Salvation Army, 413 Market Street, Georgetown, DE 19947.	Seaford, DE	NM	1	1	5	WDD	283,200	18,600
Philadelphia	032–HD008/DE26–Q941–003, Alliance for the Mentally Ill in Delaware, 2500 W. 4th Street, Wilmington, DE 19805.	New Castle, DE.	M	1	1	12	CMI	959,100	44,500
Philadelphia	032–HD009/DE26–Q941–004, The Salvation Army, 413 Market Street, Georgetown, DE 19947.	Lewes, DE	NM	1	1	3	WDD	248,400	11,200
Subtotal					3	20		1,490,700	74,300
State: Maryland									
Washington	000–HD022/MD39–Q941–001, Volunteers of America, 3939 North Causeway Blvd., Metairie, LA 70002.	Bowie, Md	M	1	1	9	CMI	372,700	34,200

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Washington	000-HD023/MD39-Q941-002, Vesta, Inc., 2340 University Blvd., E, Adelphi, MD 20783.	Prince George's Cnty, MD.	M	1	1	21	CMI	1,722,000	79,700
Washington	000-HD027/MD39-Q941-003, Joseph P. Kennedy Institute, 801 Buchanan St. N.E., Washington, DC 20017.	Silver Spring, MD.	M	3	1	15	WDD	1,055,100	56,900
Baltimore	052-HD011/MD06-Q941-002, People Encouraging People, Inc., 4201 Primrose Avenue, Baltimore, MD 21215.	Baltimore, MD	M	1	1	18	CMI	1,416,300	62,800
Baltimore	052-HD012/MD06-Q941-003, Revisions Inc., 20 Winters Lane, Catonsville, MD 21228.	Catonsville, MD.	M	1	1	9	CMI	579,800	48,900
Baltimore	052-HD013/MD06-Q941-004, Way Station, Inc., PO Box 3826, Frederick, MD 21701.	Frederic, MD	M	1	1	22	CMI	1,418,600	76,800
Subsubtotal					6	94		6,564,500	359,300
State: Pennsylvania									
Pittsburgh	033-HD023/PA28-Q941-002, H.A.N.D.S., 139 E. 12th Street, Erie, PA 06501.	Erie, PA	M	1	1	12	CMI	713,600	38,000
Pittsburgh	033-HD024/PA28-Q941-003, Goodwill Industries of Pittsburgh, 2600 East Carson Street, Pittsburgh, PA 15203.	Connellsville, PA.	M	1	1	8	CMI	488,000	22,200
Philadelphia	034-HD027/PA26-Q941-001, Belmont Housing Corp. & Inglis House, 2600 Belmont Avenue, Philadelphia, PA 19131.	Philadelphia, PA.	M	2	1	25	WPD	1,887,500	106,500
Subsubtotal					3	45		3,089,100	166,700
State: Virginia									
Washington	000-HD021/VA39-Q941-001, Hartwood Foundation, Inc., 7432 Alban Station Blvd., Springfield, VA 22150.	Springfield, VA	M	1	1	4	WDD	272,700	15,200
Washington	000-HD025/VA39-Q941-002, Pathway Homes, Inc., 2771B Hartland Rd., Fairfax, VA 22043.	Fairfax, VA	M	3	1	8	CMI	922,700	30,400
Richmond	051-HD019/VA36-Q941-003, Chesterfield Alternatives, PO Box 281, Chesterfield, VA 23832.	Chesterfield County, VA.	M	1	1	3	WDD	200,000	9,400
Richmond	051-HD020/VA36-Q941-004, Chesterfield Alternatives, PO Box 281, Chesterfield, VA 23832.	Chesterfield County, VA.	M	1	1	3	CMI	200,000	9,400
Richmond	051-HD021/VA36-Q941-005, Chesterfield Alternatives, PO Box 281, Chesterfield, VA 23832.	Chesterfield County, VA.	M	1	1	3	CMI	200,000	9,400

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Richmond	051–HD023/VA36–Q941–008, Southside Community Services Board, 424 Hamilton Blvd., South Boston, VA 24592.	South Boston, VA.	NM	2	1	4	WWD	221,700	12,500
Subsubtotal					6	25		2,017,100	86,300
State: West Virginia									
Charleston	045–HD013/WV15–Q941–002, Human Resource Devel. and Employment, Inc., 1644 Mileground, Morgantown, WV 26505.	Huntington, WV.	M	1	1	25	WPD	1,518,400	80,600
Subsubtotal					1	25		1,518,400	80,600
Subtotal					20	230		16,703,100	843,100
REGION: ATLANTA									
State: Alabama									
Birmingham	062–HD023/AL09–Q941–001, Mobile Aids Support Services Inc./VOA of S. AL, 107 North Ann Street, Mobile, AL 36604.	Mobile, AL	M	1	1	15	WPD	974,500	41,900
Birmingham	062–HD024/AL09–Q941–002, Community Service Programs of West AL Inc., 601 17th Street, Tuscaloosa, AL 35401.	Carrollton, AL	NM	1	1	7	WDD	342,500	16,800
Subsubtotal					2	22		1,317,000	58,700
State: Florida									
Jacksonville	063–HD008/FL29–Q941–002, Horizons of Okaloosa County, 123 Truxton Ave., Fort Walton Beach, FL 32549.	Fort Walton Beach, FL.	M	1	1	8	WDD	242,600	19,300
Jacksonville	066–HD017/FL29–Q941–014, AIDS Help, Inc., PO Box 4374, Key West, FL 33041.	Key West, FL	NM	1	1	11	WPD	760,500	32,400
Jacksonville	066–HD019/FL29–Q941–018, Wesley Group Homes Ministries Inc., 3816 Adams St., Hollywood, FL 33021.	Hallandale, FL	M	1	1	7	WDD	302,100	17,700
Jacksonville	066–HD020/FL29–Q941–012, New Horizons of the Treasure Coast Inc., 714 Avenue H, Ft. Pierce, FL 34950.	Martin County, FL.	M	1	1	24	CMI	1,504,800	70,700
Jacksonville	067–HD017/FL29–Q941–003, Gulf Coast Jewish Family/MH SVCS, 14041 Icot Blvd., Clearwater, FL 34620.	New Port Richey, FL.	M	1	1	7	WPD	364,200	18,200
Jacksonville	067–HD019/FL29–Q941–005, Volunteers of America, 3813 N. Causeway Blvd., Metairie, LA 70002.	Tampa, FL	M	1	1	9	CMI	468,300	20,800
Jacksonville	067–HD020/FL29–Q941–006, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	Clearwater, FL	M	1	1	6	WPD	312,200	15,600
Jacksonville	067–HD021/FL29–Q941–007, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	Clearwater, FL	M	1	1	8	WPD	491,200	20,800

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Jacksonville	067–HD022/FL29–Q941–008, Harbor Behavioral Health Care Institute, PO Box 428, New Port Richey, FL 34656.	Dade City, FL	M	1	1	4	CMI	208,100	10,400
Jacksonville	067–HD023/FL29–Q941–009, Harbor Behaviroal Health Care Institute, PO Box 428, New Port Richey, FL 34656.	Zephyrhills, FL	M	1	1	6	CMI	312,200	15,600
Jacksonville	067–HD028/FL29–Q941–019, Citrus Co. Association for Retarded Citizens, 1315 N. Vannorwick Road, Lecanto, FL 34461.	Inverness, FL	NM	1	1	18	WDD	936,600	46,800
Subsubtotal					11	108		5,902,800	288,300
State: Georgia									
Atlanta	061–HD026/GA06–Q941–001, Georgia Rehabilitation Institute, 1355 Independence Drive, Augusta, GA 30901.	Augusta, GA	M	1	1	20	WPD	1,184,900	56,800
Atlanta	061–HD029/GA06–Q941–004, SW GA Easter Seal Society Inc., 1906 Palmyra Road, Albany, GA 31707.	Tifton, GA	NM	1	1	5	WDD	223,000	11,400
Atlanta	061–HD030/GA06–Q941–005, SW GA Easter Seal Society Inc., 1906 Palmyra Road, Albany, GA 31707.	Tifton, GA	NM	1	1	12	WDD	589,500	28,400
Atlanta	061–HD031/GA06–Q941–006, Irwin Association for Retarded Citizens, PO Box 614, Ocilla, GA 31774.	Ocilla, GA	NM	1	1	5	WDD	223,000	11,400
Atlanta	061–HD032/GA06–Q941–007, DeKalb MR Auxiliary Inc., 2660 Osborne Road NE, Atlanta, GA 30319.	Stone Mountain, GA.	M	1	1	5	WDD	209,300	11,400
Atlanta	061–HD033/GA06–Q941–008, Middle GA Easter Seal Society Inc., PO Box 847, Statesboro, GA 30549.	Dublin, GA	NM	1	1	11	WDD	540,400	28,400
Subsubtotal					6	58		2,970,100	147,800
State: Kentucky									
Louisville	083–HD031/KY36–Q941–001, Cedar Lake Lodge Inc., PO Box 289, Lagrange, KY 40031.	Louisville, KY	M	1	1	4	WDD	228,600	12,100
Subsubtotal					1	4		228,600	12,100
State: Mississippi									
Jackson	065–HD005/MS26–Q941–001, Pine Belt Mental Health Care Resources, P.O. Box 1030, Hattiesburg, MS 39403.	Hattiesburg, MS.	NM	1	1	7	CMI	236,000	22,900
Subsubtotal					1	7		236,500	22,900

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
			State: North Carolina						
Greensboro	053–HD081/NC19–Q941–001, The ARC of NC Inc & ARC/HDS Inc., P.O. Box 29594, Greensboro, NC 27429.	Fairmont, NC	NM	1	1	7	WDD	309,900	18,100
Greensboro	053–HD082/NC19–Q941–002, The ARC of NC Inc & ARC/HDS Inc., P.O. Box 29594, Greensboro, NC 27429.	Chapel Hill, NC.	M	1	1	7	WDD	309,900	18,100
Greensboro	053–HD083/NC19–Q941–003, The ARC of NC Inc & ARC/HDS Inc., P.O. Box 29594, Greensboro, NC 27429.	Winston-Salem, NC.	M	1	1	7	WDD	289,700	18,100
Greensboro	053–HD084/NC19–Q941–004, The ARC of NC Inc & ARC/HDS Inc., P.O. Box 29594, Greensboro, NC 27429.	Aberdeen, NC	NM	1	1	4	WDD	252,100	12,100
Greensboro	053–HD085/NC19–Q941–005, The ARC of NC Inc & ARC/HDS Inc., P.O. Box 29594, Greensboro, NC 27429.	Rockingham, NC.	NM	1	1	4	WDD	251,100	12,100
Greensboro	053–HD086/NC19–Q941–006, Autism Society of NC Inc., 3300 Womans Club Drive, Raleigh, NC 27612.	Charlotte, NC	M	1	1	5	WDD	286,100	15,100
Greensboro	053–HD087/NC19–Q941–007, Mental Health Association of NC Inc., 3820 Bland Road, Raleigh, NC 27609.	Burlington, NC	M	1	1	11	CMI	661,200	30,200
Greensboro	053–HD088/NC19–Q941–008, UMAR–WNC Inc., 1040 E Woodlawn Rd., Charlotte, NC 28209.	Hayesville, NC	NM	1	1	7	WDD	306,800	18,100
Greensboro	053–HD089/NC19–Q941–009, Winston Salem Hsng Fdn & MBG Hsng Fdn Inc., 8 West Third Street, Winston-Salem, NC 27101.	Winston-Salem, NC.	M	1	1	12	WPD	754,700	36,200
Greensboro	053–HD090/NC19–Q941–010, NC Association For Deaf & MBG Hsng Fdn, P.O. Box 18447, Raleigh, NC 27619.	Charlotte, NC	M	1	1	24	WPD	1,512,600	72,300
Greensboro	053–HD091/NC19–Q941–011, Downtown Hsg Imprv & Comm Alternatives, P.O. Box 2185, Raleigh, NC 27602.	Raleigh, NC	M	2	1	7	CMI	485,200	21,100
Greensboro	053–HD092/NC19–Q941–012, The Brothers Fdn & Triad Health Projects, P.O. Box 36512, Charlotte, NC 28236.	High Point, NC	M	1	1	25	WPD	1,663,900	72,300
Greensboro	053–HD093/NC19–Q941–013, Residential Support Services Inc., 5601 Executive Center Dr., Charlotte, NC 28212.	Charlotte, NC	M	1	1	3	WDD	228,100	9,100

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Greensboro	053–HD094/NC19–Q941–014, Mental Health Association In NC Inc., 3820 Bland Rd., Raleigh, NC 27609.	High Point, NC	M	1	1	7	CMI	274,200	18,100
Greensboro	053–HD095/NC19–Q941–015, The Brothers Foundation Inc., P.O. Box 36512, Charlotte, NC 28236.	Charlotte, NC	M	1	1	25	WPD	1,927,800	72,300
Greensboro	053–HD098/NC19–Q941–018, Mental Health Association of NC Inc., 3820 Bland Road, Raleigh, NC 27609.	Morganton, NC.	M	1	1	11	CMI	700,300	30,200
Greensboro	053–HD099/NC19–Q941–019, Metropolitan AME Zion Church & Metro Li Hsng, 102 W Fourth Street, Washington, NC 27889.	Washington, NC.	NM	2	1	9	WPD	637,900	27,100
Greensboro	053–HD100/NC19–Q941–020, Mental Health Association of NC Inc., 3820 Bland Rd, Raleigh, NC 27609.	Rocky Mount, NC.	NM	1	1	11	CMI	668,300	30,200
Greensboro	053–HD101/NC19–Q941–021, Mental Health Association of NC Inc., 3820 Bland Road, Raleigh, NC 27609.	Winston-Salem, NC.	M	1	1	8	CMI	542,800	24,100
Subsubtotal					19	194		12,063,600	554,900
State: South Carolina									
Columbia	054–HD055/SC16–Q941–001, Sumter County Disabilities and Special Needs, Post Office Box 2847, Sumter, SC 29151.	Sumter, SC	NM	1	1	12	WDD	846,500	33,600
Columbia	054–HD056/SC16–Q941–002, Orangeburg Association for Retarded Citizens, Post Office Box 1812, Orangeburg, SC 29115.	Elloree, SC	NM	1	1	6	WDD	423,200	16,800
Columbia	054–HD057/SC16–Q941–003, Orangeburg Association for Retarded Citizens, Post Office Box 1812, Orangeburg, SC 29115.	Orangeburg, SC.	NM	1	1	3	WPD	211,600	8,400
Columbia	054–HD058/SC16–!941–004, Calhoun County Development Disabilities Corp, Route 4, Box 79B, St. Matthews, SC 29135.	St. Matthews, SC.	NM	1	1	6	WDD	423,200	16,800
Columbia	054–HD059/SC16–Q941–005, Kershaw County Mental Health Association, Post Office Box 1946, Sumter,SC 29150.	Camden, SC	NM	1	1	20	CMI	1,040,700	55,900
Columbia	054–HD060/SC16–Q941–006, CLC for Rehab & Special Education Inc., 195 Burdette Street, Spartanburg, SC 29307.	Inman, SC	M	1	1	6	WPD	425,800	16,800

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Columbia	054–HD062/SC16–Q941–008, Laurens Co Assoc for Retarded Citizens Inc., Post Office Box 735, Laurens, SC 29360.	Laurens, SC	NM	1	1	3	WPD	211,600	8,400
Columbia	054–HD064/SC16–Q941–010, The Junior Welfare League Inc., Post Office Box 30, Rock Hill, SC 29731.	Rock Hill, SC	M	1	1	12	WDD	856,800	33,600
Columbia	054–HD065/SC16–Q941–011, New Day, Inc. of Spartanburg, Post Office Box 5396, Spartanburg, SC 29304.	Spartanburg County, SC.	M	1	1	21	CMI	1,034,200	55,900
Columbia	054–HD067/SC16–Q941–013, Friendship Center, Inc., 1135 Carter Street, Columbia, SC 29204.	Winnsboro, SC	NM	1	1	20	CMI	1,040,700	55,900
Columbia	054–HD068/SC16–Q941–014, Kershaw Cnty Activity CTR Steering Comm., PO Box 310, Camden, SC 29020.	Kershaw County, SC.	NM	1	1	8	WDD	428,400	16,800
Subsubtotal					11	117		6,942,700	318,900
State: Tennessee									
Nashville	081–HD012/TN40–Q941–002, Northwest Counseling Center, PO Box 1024, Martin, TN 38237.	Union City, TN	NM	1	1	21	CMI	851,300	57,000
Nashville	086–HD003/TN43–Q941–001, James Developmental Center, PO Box 605, Waverly, TN 37185.	Waverly, TN	NM	1	1	4	WDD	160,800	10,700
Knoxville	087–HD017/TN37–Q941–001, Rogers-Culliver Supportive Living Home Inc., 2536 Jefferson Avenue, Knoxville, TN 37914.	Knoxville, TN	M	2	1	9	CMI	238,100	22,200
Knoxville	087–HD018/TN37–Q941–002, Regional Educ & Comm Health Service, PO Box 209, Main Stret at Liberty, Jacksboro, TN 37757.	Jacksboro, TN	NM	1	1	7	WDD	240,100	16,700
Subsubtotal					4	41		1,490,300	106,600
Subtotal					51	551		3,1151,600	1,510,200
REGION: CHICAGO State: Illinois									
Chicago	071–HD046/IL06–Q941–003, Sinnissippi Center, 325 Illinois Route 2, Dixon, IL 61021.	Rochelle, IL	NM	1	1	8	CMI	470,500	27,600
Chicago	071–HD051/IL06–Q941–008, Thresholds, 2700 N. Lakeview, Chicago, IL 60614.	Chicago, IL	M	1	1	8	CMI	341,100	27,600
Chicago	071–HD052/IL06–Q941–009, Thresholds, 2700 N. Lakeview, Chicago, IL 60614.	Harvey, IL	M	1	1	8	CMI	341,100	27,600
Chicago	071–HD053/IL06–Q941–010, Thresholds, 2700 N. Lakeview, Chicago, IL 60614.	Chicago, IL	M	1	1	8	CMI	34,110	27,600

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Chicago	071-HD060/IL06-Q941-017, Antioch Missionary Bapt, 415 W Englewood, Chicago, IL 60621.	Chicago, IL	M	1	1	24	WPD	1,813,800	79,400
Chicago	071-HD061/IL06-Q941-018, Family Service Centers, 122 Town Center #200, Matteson, IL 60443.	Midlothian, IL	M	1	1	9	CMI	616,600	27,600
Chicago	071-HD044/IL06-Q941-001, Bridgeway, Inc., 2323 Windish Drive, Galesburg, IL 61042.	Galesburg, IL	NM	1	1	15	CMI	882,300	51,800
Chicago	071-HD045/IL06-Q941-002, Peoria Arc, 2006 W. Altorfer Dr, Peoria, IL 61612.	Peoria, IL, IL	M	1	1	16	WDD	960,800	55,200
Chicago	071-HD057/IL06-Q941-014, Gail M. Leiby, 3215 N. University, Peoria, IL 61604.	Peoria, IL	M	1	1	24	WDD	1,436,000	82,800
Subsubtotal					9	120		7,203,300	407,200
State: Indiana									
Indianapolis	073-HD028/IN36-Q941-001, South Central Comm. MH, 645 South Rogers Street, Bloomington, IN 47403.	Bedford, IN	NM	1	1	20	CMI	1,111,800	61,000
Indianapolis	073-HD029/IN36-Q941-002, Northeastern Center, PO Box 817, Kendallville, IN 46755.	Kendallville, IN	NM	1	1	8	CMI	271,200	25,700
Indianapolis	073-HD030/IN36-Q941-003, Quinco Consulting, PO Box 628, Columbus, IN 47202.	Greensburg, IN.	NM	1	1	25	CMI	1,412,600	77,000
Indianapolis	073-HD032/IN36-Q941-005, Northeastern Center, PO Box 817, Kendallville, IN 46755.	Kendallville, IN	NM	1	1	6	CMI	253,600	19,300
Indianapolis	073-HD034/IN36-Q941-007, Park Center, Inc., 909 East State Boulevard, Fort Wayne, IN 46805.	Fort Wayne, IN.	M	1	1	15	CMI	833,800	48,100
Subsubtotal					5	74		3,883,000	231,100
Michigan									
Grand Rapids	047-HD012/M133-Q941-003, Hope Network, Box 0141, Grand Rapids, MI 49501.	Three Rivers, MI.	NM	1	1	18	WPD	1050900	53900
Subsubtotal					1	18		1,050,900	53,900
State: Minnesota									
Minn/St. Paul	092-HD020/MN46-Q941-001, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	Marshall, MN	NM	1	1	25	WPD	1,573,900	83,800
Minn/St. Paul	092-HD022/MN46-Q941-003, Accessible Space, Inc., 2550 University Avenue W., St. Paul, MN 55114.	Duluth, MN	M	1	1	25	WPD	1,680,600	83,800
Minn/St. Paul	092-HD023/MN46-Q941-004, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	Willmar, MN	NM	1	1	22	WPD	1,457,300	73,300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Subsubtotal					3	72		4,711,800	240,900
State: Ohio									
Cleveland	042–HD032/OH12–Q941–001, Lutheran Metropolis, 1468 West 25, Cleveland, OH 44113.	Lorain, OH	M	1	1	24	WPD	1,450,000	82,800
Cleveland	042–HD033/OH12–Q941–002, Mareda Inc., 1931 Scottwood, Toledo, OH 43620.	Toledo, OH	M	1	1	24	WDD	1,591,400	86,400
Cleveland	042–HD034/OH12–Q941–003, Ctr. for Individual, 741 Scholl Road, Mansfield, OH 44907.	Mansfield, OH	M	1	1	24	WDD	1,178,800	86,400
Cleveland	042–HD035/OH12–Q941–004, Kevin Coleman MH, 5982 Rhodes Road, Kent, OH 44240.	Kent, OH	M	1	1	11	CMI	654,100	39,600
Cleveland	042–HD039/OH12–Q941–008, David's Housing Co., 501 North Detroit Avenue, Toledo, OH 43607.	Toledo, OH	M	1	1	6	WPD	360,700	21,600
Cleveland	042–HD040/OH12–Q941–009, Community Drug Board, 725 East Market Street, Akron, OH 44305.	Akron, OH	M	1	1	20	CMI	1,248,800	72,000
Columbus	043–HD015/OH16–Q941–002, Fairfld Family Counsel, 225 South Ewing Street, Lancaster, OH 43130.	Lancaster, OH	M	1	1	17	CMI	380,000	22,300
Columbus	043–HD016/OH16–Q941–003, Comm Hsg Network, 255 East Livingston Ave, Columbus, OH 43215.	Lancaster, OH	M	1	1	16	CMI	884,300	47,800
Columbus	043–HD017/OH16–Q941–004, Comm Hsg Network, 255 East Livingston Ave, Columbus, OH 43215.	Columbus, OH	M	1	1	16	CMI	884,300	47,800
Columbus	043–HD018/OH16–Q941–005, Hill Manor Enterprises, 927 South Ohio Avenue, Columbus, OH 43206..	Columbus, OH	M	2	1	5	WDD	250,900	16,000
Columbus	043–HD019/OH16–Q941–006, Hill Manor Enterprise, 927 South Ohio Avenue, Columbus, OH 43206..	Columbus, OH	M	2	1	4	WDD	235,500	12,800
Subsubtotal					11	157		9,118,800	535,500
State: Wisconsin									
Milwaukee	075–HD024/WI39–Q941–001, Catholic Charities Bureau, 1416 Cumming Ave, Superior, WI 54880.	Amery, WI	NM	1	1	8	CMI	385,200	26,600
Milwaukee	075–HD026/WI39–Q941–003, Catholic Charities Bureau, 1416 Cumming Ave, Superior, WI 54880.	Rice Lake, WI	NM	1	1	8	CMI	385,200	26,600
Subsubtotal					2	16		770,400	53,200
Subtotal					31	457		26,738,200	1,521,800

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
REGION: FORT WORTH									
State: ARKANSAS									
Little Rock	082–HD020/AR37–Q941–002, Crowley's Ride Developmental Council, PO. Box 1497, Jonesboro, AR 72403.	Jonesboro, AR	NM	1	1	20	CMI	904,900	48,900
Little Rock	082–HD022/AR37–Q941–004, Pathfinder Schools, Inc., PO Box 647, Jacksonville, AR 72076.	Bryant, AR	M	1	1	9	WDD	407,200	20,600
Little Rock	082–HD023/AR37–Q941–005, Quachita Regional Counseling & Mental Health, PO Box 6399, Hot Springs, AR 71902.	Hot Springs, AR.	NM	1	1	21	CMI	950,200	51,500
Little Rock	082–HD026/AR37–Q941–008, Quachita Regional Counseling & Mental health, PO Box 6399, Hot Springs, AR 71902.	Malvern, AR	NM	1	1	21	CMI	950,200	51,500
Little Rock	082–HDO28/AR37–Q941–010, VDA, 3939 N Causeway BLV #400, Metairie, LA 70002.	North Little Rock, AR.	M	1	1	12	CMI	542,900	28,300
Little Rock	082–HD029/AR37Q0941–011, East Arkansas Regional MH Center, Inc., 305 Valley Dr, Helena, AR 72342.	Wester Helena, AR.	NM	1	1	24	CMI	1,085,900	61,800
Little Rock	082–HD032/AR37–Q941–014, C.B. King Memorial School, Inc., PO Box 1051, McGehee, AR 71654.	McGehee, AR	NM	2	1	8	WDD	235,300	20,600
Subsubtotal					7	15		5,076,600	283,200
State: Louisiana									
New Orleans	064–HD025/LA48–Q941–003, SW Louisiana Independence Center, 3104 Enterprise Blvd., Lake Charles, LA 70601.	Lake Charles, LA.	M	1	1	20	WPD	1,142,700	59,400
New Orleans	064–HD027/LA48–Q0941–005, Vernon Community Action Council, PO Box 275, Lessville, LA 71496.	Leesville, LA	NM	1	1	11	WDD	504,800	29,600
New Orleans	064–HD029/LA48–Q941–007, Terrebonne Alliance for the Mentally Ill, 45 HMS Court, Houma, LA 70364.	Houma, LA	M	1	1	24	CMI	1,186,800	71,300
Subsubtotal					3	55		2,834,300	160,300
State: Oklahoma									
Oklahoma City	117–HD011/OK56–Q941–007, McCall's Chapel School, Inc. RRY, Box 232, Ada, OK 74820.	Ada, OK	NM	1	1	16	WWD	765,400	41,500
Oklahoma City	118–HD004/0K56–Q941–004, Associated Centers for Therapy, 7010 S. Yale, Tulsa, OK 74136–5705.	Broken Arrow, OK.	M	1	1	25	CMI	1,259,700	68,600

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Oklahoma city	118–HD007/OK56–Q941–008, Home of Hope, Inc. 900 Hope Ave., Vinita, OK 74301.	Vinita, OK	NM	1	1	24	WWD	928,400	68,600
Subsubtotal					3	65		2,953,500	178,700
State: Texas									
Fort Worth	113–HD003/TX21–Q941–001, Ability Resources, Inc. 7404 Camelot Road Fort Worth, TX 76134.	Forth Worth, TX.	M	1	1	5	WPH	2,215,00	12,100
Fort Worth	113–HD004/TX21–Q941–002, Ability Resources, Inc., 7404 Camelot Road, Fort Worth, TX 76134.	Haltom City, TX.	M	1	1	4	WPH	207,900	9,100
Fort Worth	113–HD005/TX21–Q941–003, Ability Resources, Inc., 7404 Camelot Road, Fort Worth, TX 76134.	Fort Worth, TX	M	1	1	3	WPH	194,300	9,100
Fort Worth	113–HD006/TX21–Q941–004, Ability Resources, Inc., 7404 Camelot Road, Fort Worth, TX 76134.	Fort Worth, TX	M	1	1	4	WPH	207,900	121,000
Forth Worth	113–HD007/TX21–Q941–005, Ability Resources, Inc., 7404 Camelot Road, Fort Worth, TX 76134.	Fort Worth, TX	M	1	1	2	WPH	180,700	6,100
Fort Worth	113–HD008/TX21–Q941–006, Ability Resources, Inc., 7404 Camelot Road, Fort Worth, TX 76134.	Fort Worth, TX	M	1	1	4	WPH	207,900	9,100
San Antonio	115–HD014/TX59–Q941–002, San Antonio Alliance for Mentally Ill, P.O. Box 12084, San Antonio, TX 78212.	San Antonio, TX.	M	1	1	24	CMI	1,381,600	66,500
San Antonio	115–HD015/TX59–Q941–003, Gonzales City Mental Health Advisory Board, 312 McClure, Gonzales, TX 78629.	Gonzales, TX	NM	1	1	24	CMI	1,469,300	66,500
Subsubtotal					8	70		4,071,100	190,600
Subtotal					21	305		14,935,500	812,800
REGION: KANSAS CITY									
State: Iowa									
Des Moines	074–HD012/IA05–Q941–001, Hillcrest Family Services, 205 12th Street, Cedar Rapids, IA 52403.	Iowa City, IA	M		1	5	CMI	224,900	14,700
Subsubtotal					1	5		224,900	14,700
State: Kansas									
Kansas City	102–HD018/KS16–Q941–001, COF Training Services, Inc., P.O. Box 437, Ottawa, KS 66067.	Ottawa/Burling./O.C., KS.	NM		1	15	WDD	973,000	43,300
Subsubtotal					1	15		973,000	43,300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
State: Missouri									
Kansas City	084-HD015/MO16-Q941-001, Ideal Industries, Inc., 601 North Thornton, Richmond, MO 64085.	Richmond, MO	M		1	16	WDD	879,100	45,800
St. Louis	085-HD007/MO36-Q941-001, Gateway Chapter PV, 9535 Lackland Road, St. Louis, MO 63114.	St. Louis, MO	M		1	18	WPH	1,082,100	60,300
St. Louis	085-HD008/MO36-Q941-003, Interfaith Res DBA Doorways, P.O. Box 4562, St. Louis, MO 63108.	St. Louis, MO	M		1	21	WPH	1,300,000	67,200
Subsubtotal					3	55		3,261,200	173,300
State: Nebraska									
Omaha	103-HD009/NE26-Q941-001, Southwest Area Training Service, 506 E. 12th, P.O. Box 58, McCook, NE 69001.	McCook, NE	NM		1	22	WDD	883,300	64,800
Omaha	103-HD010/NE26-Q941-002, South Central Counseling, 3810 Central Avenue, Kearney, NE 68847.	Hastings, NE	NM		1	11	CMI	526,100	32,400
Subsubtotal					2	33		1,409,400	97,200
Subtotal					7	108		5,868,500	328,500
REGION; DENVER State: Montana									
Denver	093-HD006/MT99-Q941-002, Mental Health Serv, 512 Logan, Helena, MT 59601.	Livingston, MT	NM	1	1	7	CMI	361,900	17,700
Denver	093-HD008/MT99-Q941-004, Accessible Space Inc., 2550 University Ave West, St. Paul, MN 55114.	Billings, MT	M	1	1	25	WPD	1,422,700	65,000
Subsubtotal					2	32		1,784,600	82,700
State: North Dakota									
Denver	094-HD004/ND99-Q941-001, Accessible Space, 2550 University Ave. West, St. Paul, MN 55114.	Minot, ND	NM	1	1	25	WDD	1,316,000	65,000
Denver	094-HD005/ND99-Q941-002, Prairie Harvest, 930 North 3rd Street, Grand Forks, ND 58203.	Grand Forks, ND.	M	1	1	13	CMI	644,400	32,500
Subsubtotal					2	38		1,960,400	97,500
Subtotal					4	70		3,745,000	180,200
REGION: SAN FRANCISCO State: Arizona									
Phoenix	123-HD010/AZ20-Q941-001, Valley of the Sun School & Center, 1142 West Hatcher Road, Phoenix, AZ 85021.	Phoenix, AZ	M	1	1	25	WDD	1,137,300	73,600

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94-138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Subsubtotal					1	25		1,137,300	73,600
			State: California						
San Francisco	121-HD020/CA39-Q941-001, AID Employment, P.O. Box 5003 (L-452), Livermore, CA 94551.	Livermore, CA	M	1	1	12	WDD	911,400	49,700
San Francisco	121-HD021/CA39-Q941-002, Fred Finch Youth Center/O.C.H.I., 3800 Coolidge Avenue, Oakland, CA 94602.	Oakland, CA	M	1	1	25	CMI	1,743,200	108,400
San Francisco	121-HD022/CA39-Q941-003, Santa Cruz Community Counseling, 292 Harvey West Blvd., Santa Cruz, CA 95060.	Watsonville, CA.		1	1	5	CMI	289,200	22,600
San Francisco	121-HD023/CA39-Q941-004, Buckelew Programs/E.A.H., 914 Mission, San Rafael, CA 94901.	Novato, CA	M	1	1	16	CMI	1,163,500	72,300
San Francisco	121-HD025/CA39-Q941-006, Resources for Community Development, 2131 University Avenue, #224, Berkeley, CA 94701.	Emeryville, CA	M	2	1	8	WPD	395,000	36,200
San Francisco	121-HD028/CA39-Q941-009, North Bay Rehab Services, 1113 Second Street, San Rafael, CA 94901.	Petaluma, CA	M	1	1	13	WDD	905,500	54,200
San Francisco	121-HD029/CA39-Q941-010, North Bay Rehab Services, 1113 Second Street, San Rafael, CA 94901.	Rohnert Park, CA.	M	1	1	24	WDD	1,671,800	103,900
San Francisco	121-HD030/CA39-Q941-011, Allen Temple Housing and E.D. Corporation, 8135 East 14th Street, Oakland, CA 94621.	Oakland, CA	M	2	1	24	WPD	1,935,300	103,900
Los Angeles	122-HD053/CA16-Q941-006, Living Connections, Inc., 1801—21st St., #5, Bakersfield, CA 93301.	Bakersfield, CA.	M	1	1	25	CMI	1,943,000	102,300
Los Angeles	122-HD059/CA16-Q941-012, Community of Friends, 3345 Wilshire Blvd. #1000, Los Angeles, CA 90010.	San Diego, CA	M	1	1	21	CMI	1,540,700	78,400
Los Angeles	122-HD060/CA16-Q941-013, Community of Friends, 3345 Wilshire Blvd. #1000, Los Angeles, CA 90010.	Pasadena, CA	M	1	1	12	CMI	884,200	46,900
Los Angeles	122-HD061/CA16-Q941-014, Homes for Life Foundation, 8726-D S. Sepulveda Blvd. Los Angeles, CA 90045.	Torrence, CA	M	1	1	18	CMI	1,038,500	76,700
Los Angeles	122-HD062/CA16-Q941-015, Homes for Life Foundation, 8726-D S. Sepulveda Blvd. Los Angeles, CA 90045.	North Hollywood, CA.	NM	1	1	25	CMI	1,707,900	102,300

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
Sacramento	136–HD005/CA30–Q941–001, Catholic Charities of Sacramento, Inc., 1733 Oregon St., Redding, CA 96001.	Chico, CA	M	1	1	21	WDD	1,363,600	75,000
Sacramento	136–HD006/CA30–Q941–002, Trans Living & Community Support/RHF, 1631 P ST., Sacramento, CA 95814.	Sacramento, CA.	M	1	1	21	CMI	1,589,900	75,000
Subsubtotal					15	270		19,082,700	1,107,800
State: Hawaii									
Honolulu	140–HD009/HI10–Q941–002, Steadfast Housing Development, 677 Ala Moana Blvd., Honolulu, HI 96813.	Kaunakakai, HI.	NM	5	1	6	CMI	502,900	24,000
Honolulu	140–HD010/HI10–Q941–003, Steadfast Housing Development, 677 Ala Moana Blvd., Honolulu, HI 96813.	Honokaa, HI	NM	5	1	6	CMI	502,900	24,000
Honolulu	140–HD011/HI10–Q941–004, Lokahi Pacific, 840 Alua Street, Wailuku, HI 96793.	Wailuku, HI	NM	5	1	10	CMI	1,163,500	48,000
Subsubtotal					3	22		2,169,300	96,000
State: Nevada									
SAN FRANCISCO	121–HD031/NV39–Q941–001, Accessible Space, Inc., 2550 University Avenue W., #301N, St. Paul, MN 55114.	Las Vegas, NV	M	1	1	25	WPD	1,573,900	81,100
Subsubtotal					1	25		1,573,900	81,100
Subtotal					20	342		23,963,200	1,358,500
REGION: SEATTLE									
State: Alaska									
Anchorage	176–HD006/AK06–Q941–001, Life Quest, 230 East Paulson, Wasilla, AK 99654.	Wasilla, AK	NM	1	1	5	WDD	570,000	29,900
Subsubtotal					1	5		570,000	29,900
State: Idaho									
PORTLAND	124–HD003/ID16–Q941–001, Project Idaho Inc, CO 404 Valley Vista Blvd, Lewiston, ID 83501.	Lewiston, ID	NM	1	1	12	WDD	701,500	34,200
Subsubtotal					1	12		701,500	34,200
State: Oregon									
Portland	126–HD011/OR16–Q941–001, National Benevolent Association, 11780 Borman Drive, St. Louis, MO 63146.	Eugene, OR	M	1	1	20	WPD	1,105,300	64,000
Subsubtotal					1	20		1,105,300	64,000

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES—FISCAL YEAR 1994 SELECTIONS—Continued

[To accompany HUD 94–138]

Office	FHA and project rental assistance contract (PRAC) numbers, sponsor name and address	Location	Metro or non-metro	Minority code	Number of projects	Units	Tenant type	Capital advance amount	Rental assistance contr authority
State: Washington									
Seattle	127–HD010/WA19–Q941–005, Comm Psychiatric, 401 Second Avenue W., Seattle WA 98133.	Seattle, WA	M	1	1	16	CMI	1,040,000	53,100

[FR Doc. 94–31459 Filed 12–22–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of applications for permit.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–797352

Applicant: National Council of the Paper Industry for Air and Stream Improvement, Inc., (Dr. T. Bently Wigley), Clemson, South Carolina.

The applicant requests a permit to take (conduct population surveys, handle, band, and release) red-cockaded woodpeckers (*Picoides borealis*) throughout the Southeastern United States. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–797420

Applicant: Mr. Wendell Neal, Raymond, Mississippi.

The applicant requests a permit to take (trap, survey, and monitor) the Alabama beach mouse (*Peromyscus polionotus ammobates*), Anastasia Island beach mouse (*Peromyscus polionotus phasma*), Choctawahatchee beach mouse (*Peromyscus polionotus allophrys*), Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) and southeastern beach mouse (*Peromyscus polionotus niveiventris*) throughout their respective ranges in the southeastern United States. These activities are proposed for the purpose of enhancement of survival of the species

PRT–797421

Applicant: South Illinois University at Carbondale (SIU), Ms. Kyle R. Piller, Carbondale, Illinois.

The applicant requests a permit to take (handle and hold in captivity to conduct research) the Relict Darter, (*Etheostoma chienense*) in western Kentucky. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–797423

Applicant: Dr. Numi Goodyear, Kingston, Rhode Island.

The applicant requests a permit to take (trapping and handling) the Silver rice rat, (*Oryzomys argentatus*) in the Lower Keys of Monroe County, Florida. These activities are for the purpose of enhancement of survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7081.

Dated: December 15, 1994.

John T. Brown,

Acting Regional Director.

[FR Doc. 94–31562 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–55–P

Finding of No Significant Impact for an Incidental Take Permit for the Proposed Spicewood at Bull Creek and Canyon Mesa, Phase I, Block D Development in Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a residential development in northwest Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(2) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant plans to construct single-family residences on 196 acres in northwest Travis County, Texas. The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the Spicewood at Bull Creek and Canyon Mesa, Phase I, Block D Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,
3. Sale of this property and the purchase of another parcel to develop,
4. Alternative site design,

5. Wait for issuance of the Balcones Canyonlands Conservation Plan Section 10(a)(1)(B) permit.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the Spicewood at Bull Creek and Canyon Mesa, Phase I, Block D Development in northwest Travis County, Texas.

John G. Rogers,

Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 94–31564 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–930–01–1430–01 N–56905]

Realty Action, Nevada

AGENCY: Bureau of Land Management

ACTION: Notice of Realty Action—Modified Competitive Sale of Public Lands, Elko County, Nevada.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), the BLM will offer for sale under modified sale procedures, at no less than fair market value, the following described contiguous parcel of public land which has been found suitable for disposal. The land will not be offered for sale until at least sixty days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T 33 N., R. 57 E., MDM

Sec. 2, lot 4, SW¼NW¼, W½SW¼.

Comprising 160.87 acres, more or less. The appraised fair market value for the above described parcel is $42,600 or $265.00 per acre.

DATES: The sale offering will be on March 1, 1995, at 10:00 a.m. at the Bureau of Land Management, Elko District Office, 3900 E. Idaho St., Elko, NV 89801.

SUPPLEMENTARY INFORMATION: The lands are being offered for public sale by the BLM in order to facilitate and enhance land use capability with an adjoining private landowner. The lands have been specifically identified as suitable for disposal by the Elko Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency. Legal access to the parcel is available via Lower Lamoille Road (Elko County Road N–46527).

As a condition of sale, in accordance with 43 CFR 4120.3–6(c), the current grazing permittee will be entitled to receive reasonable compensation from the successful bidder for the adjusted value of any authorized range improvements located on the subject parcel. Specific range improvements involved are described in Environmental Assessment BLM/EK/PL–94/039 prepared on behalf of the sale.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for oil and gas. Therefore, the mineral estate, excluding oil and gas, will be conveyed simultaneously with the surface estate in accordance with Section 209(b)(1) of FLPMA. Acceptance of a sale offer will constitute an application for conveyance of the mineral interests. The high bidder will be required to submit a $50.00 nonrefundable filing fee with the remainder of the purchase price for conveyance of the mineral interests specified above. Failure to submit the nonrefundable fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Sale Procedures: The land will be sold by modified competitive sale procedures with a preference right given to Joseph Key. The sale procedures will require the bidder to submit a written bid for no less than the fair market value. Each bid submitted will be accompanied by a certified check, postal money order, bank draft, or cashiers check for no less than 20% or 1/5 of the total amount bid for the parcels. Under modified competitive sale procedures, an apparent high bid will be declared by the BLM. The apparent high bidder and Joseph Key (designated bidder) will be notified. The designated bidder will have 15 days from the date of notification to exercise the preference consideration to meet the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared high bidder and awarded the sale. The apparent high bidder must submit the remainder of the full bid price prior to expiration of 180 days from the date of the sale. The amount will be paid by certified check, postal money order, bank draft, or cashiers check payable to the Department of the Interior–BLM. Failure to meet the conditions established for this sale will void the sale and any money received for the sale will be forfeited as proceeds of the sale to the BLM.

Sealed bids for no less than the appraised fair market value as determined by government appraisal will be received until February 28, 1995, 4:30 p.m. The bid envelope must be marked on the lower left hand corner with BLM LAND SALE—DO NOT OPEN and SALE DATE. It is recommended that all mailed bids be sent via certified mail to District Manager, Bureau of Land Management, P.O. Box 831, Elko, NV 89803. The bid must not be for less than the appraised fair market value as specified in this notice. Bids will only be accepted for the entire parcel. DO NOT submit a bid for only a portion of the parcel. Each bid submitted will contain at least 20% or 1/5 of the total amount bid for the parcel. Any bids not conforming to the sale conditions or received after the above date and time will be returned to the bidders. In the event that two or more written high bids have been submitted in the same amount, the determination of which is to be considered the highest bid shall be by submission of new sealed bids by those bidders. In the event that no bids are received on the parcels, the public lands in this sale proposal would remain for sale, over the counter, for a period of 30 days from date of sale. Interested parties may inquire about the parcel at the Bureau of Land Management, 3900 E. Idaho St., Elko, Nevada 89801, during the office hours of 7:30 a.m. to 4:30 p.m., Monday through Friday. The parcel would be available for sale through sealed bid procedures with all conditions of the sale applying. The BLM may accept or reject any or all offers or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.
2. Oil and gas.

And will be subject to:

Those rights for road purposes which have been granted to the Elko County Board of Commissioners, its successors or assignees, by right-of-way grant N-46527 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws, including the mining laws, mineral leasing laws, and the Geothermal Steam Act. The segregation will terminate upon issuance of the patent or other document of conveyance, or upon publication in the **Federal Register** of a termination of segregation, or 270 days from date of publication, which ever occurs first. Federal law requires that all bidders must be U.S. citizens, 18 years of age or older, or in the case of corporations, be subject to the laws of any state of the United States. Proof of these requirements must accompany the bid.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 831, Elko, Nevada 89803. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior.

Dated: December 15, 1994.

Nancy Phelps,

Associate District Manager.

[FR Doc. 94-31534 Filed 12-22-94; 8:45 am]

BILLING CODE 4310-HC-P

Bureau of Land Management

[MT-020-05-4920-10-4033; SDM 83232]

Notice of Realty Action—Exchange; South Dakota Correction

In notice document 94-28425 beginning on page 59418 in the issue of Thursday, November 17, 1994, make the following corrections:

1. On page 59418 in the third column, the serial number for the project was previously listed in the Heading and Action paragraphs as "SDM 75269". This should read "SDM 83232".

2. On page 59419 in the first column;

a. "Principal Meridian, Black Hills" should read "Black Hills Meridian, South Dakota";

b. Following line 14 which reads "Section 1, Lot 2" and preceding line 15 which reads "T. 20 N., R. 6 E.," insert "T. 21 N., R. 5 E., Section 34, NE¼NE¼".

Comments on this tract of land must be submitted on or before February 6, 1995.

Dated: December 16, 1994.

Janet L. Edmonds,

Acting District Manager.

[FR Doc. 94-31535 Filed 12-22-94; 8:45 am]

BILLING CODE 4310-DN-P

National Park Service

Intent to Issue A Prospectus for the Operation and Management of A Golf Course

SUMMARY: The National Park Service will shortly issue a Prospectus for a Concession Contract to operate and manage a golf course in the Presidio of San Francisco, California.

SUPPLEMENTARY INFORMATION: The Presidio has been transferred from the Department of Army to the National Park Service and is component of the Golden Gate National Recreation Area. A number of facilities will now become available for public use under the administration of the National Park Service. The Presidio Golf Course is one of these facilities.

The opportunity includes operating and managing an 18-hole golf course and driving range under a concession contract. The opportunity also includes related services such as a pro shop, food service, lounge, locker room and other appropriate facilities. The golf course plays 6,143 yards from the white tees and has a slope rating of 126. The course covers approximately 160 acres.

If you are interested in this business opportunity and wish to receive a copy of the Prospectus and the application when they are issued, and all the pertinent information pertaining to this operation, please send your name and address to: National Park Service,Concession Program Management Division, 600 Harrison Street, Suite 600, San Francisco, CA 94107-1372, or call: (415) 744-3981 - Teresa Jackson.

When the Prospectus is issued, applications will be accepted for SIXTY (60) days under the terms described in the Prospectus.

Dated: December 15, 1994.

Stephen G. Crabtree,

Acting Regional Director, Western Region.

[FR Doc. 94-31547 Filed 12-22-94; 8:45 am]

BILLING CODE 4310-70-P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 17, 1994. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by January 9, 1995.

Beth L. Savage,

Acting Chief of Registration, National Register.

KANSAS

Wabaunsee County

Snokomo School, 8 mi. S. of Paxico, Paxico vicinity, 94001576

LOUISIANA

Caddo Parish

Kansas City Southern Depot, 100 N. W. Front St., Vivian, 94001578

Caldwell Parish

Blanks House, 333 Wall St., Columbia, 94001567

Webster Parish

Union Church, Jct. of Yellow Pine Rd. and LA 7, Sibley vicinity, 94001562

MARYLAND

Baltimore Independent City

Engine House. No. 8, (Cast Iron Architecture of Baltimore MPS), 1027 W. Mulberry St., Baltimore (Independent City, 94001577

Turner—White Casket Co. Building (Cast Iron Architecture of Baltimore MPS), 509—511 W. Lombard St., Baltimore (Independent City), 94001553

MISSOURI

Buchanan County

St. Joseph Park and Parkway System (St. Joseph MPS), Roughly, along Northwest, Northeast, Corby Grove, Southwest and A Pkwys. and Noyes Blvd., from Krug Park to Hyde Park., St. Joseph, 94001566

St. Charles County

Augusta Harmonie Verein (Augusta MPS), Jct. of Hackman and Church Rd., Augusta, 94001554

Berling, Dr. C. L., House (Augusta MPS), 245 Lower St., Augusta, 94001558

Ewich, Robert, Farmstead (Augusta MPS), 5336 Hackman Rd., Augusta, 94001556

Farris, Charles McLee, House (Augusta MPS), 5517 High St., Augusta, 94001559

Mindrup House—Store (Augusta MPS), 5543 Water St., Augusta, 94001557

Schroer, J. F. House—Store (Augusta MPS), 252 Lower St., Augusta, 94001555

NEVADA

Clark County

Eureka Locomotive, 4816 Martinelli Ct., Las Vegas, 94001575

NEW YORK

Saratoga County

Dutch Reformed Church of Gansevoort, 10 Catherine St., Gansevoort, 94001568

OKLAHOMA

Carter County

Bethel Missionary Baptist Church, Jct. of Webster and Lane Sts., SE corner, Tatums, 94001519

PENNSYLVANIA

Jefferson County

Miller, Christian, House, 233 W. Mahoning St., Punxsutawney, 94001565

SOUTH CAROLINA

Abbeville County

Donalds Grange No. 497, SC 184, Donalds, 94001564

Charleston County

West Point Rice Mill, Jct. of Lockwood Dr. and Calhoun St., Charleston, 94001569

Edgefield County

Marshfield, Youngblood Rd. NW of Trenton, Trenton vicinity, 94001561

Richland County

North Carolina Mutual Building, 1001½, 1001 and 1003 Washington St., Columbia, 94001570

Olympia Armory, 511 Granby Ln., Columbia, 94001571

Randolph Cemetery, Western terminus of Elmwood Ave., Columbia, 94001573

Sumter County

Scarborough, Henry Lee, House, 425 N. Main St., Sumter, 94001560

York County

Hill, W. L., Store, 3034 York St., Sharon, 94001572

UTAH

Utah County

Chipman, Delbert and Ora, House, 317 E. Main St., American Fork, 94001563

WISCONSIN

Juneau County

Sprague Bridge, Over the Yellow R. SE of Finley, Finley Township, Finley vicinity, 94001574

[FR Doc. 94–31585 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–70–M

Delaware Water Gap National Recreation Area Citizens Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday January 19, 1995 at 7:00 p.m.

Address: Bushkill School, Bushkill, PA 19324.

MEETING DATE AND TIME: Thursday, March 16, 1995 at 7:00 p.m.

ADDRESSES: New Jersey District Office, 2 Walpack—Flatbrookville Rd., Route 615, Layton, NJ 07851

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including; By-Laws, Natural Resources, Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, as well as Special Committee Reports. Superintendent Roger K. Rector will give a report on various park issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P. O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: December 14, 1994.

Warren D. Beach,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 94–31548 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–70–M

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, January 19, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Peak 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:

—Background information
—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, Peak 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: December 8, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–31549 Filed 12–22–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Cost Recovery Percentage

An error was discovered in Appendix A to a decision in Ex Parte No. 399, *Cost Recovery Percentage* served March 23, 1993 and published in the **Federal Register** on March 24, 1993, at 58 FR 15881.

In the decision the page designated Appendix A, "Manual Make-Whole Work Sheet" contains an error. To

correct the error: line 4–h is deleted; line 4–i is renumbered to 4–h; and the Mileage Add-On calculation is changed from line 4–h x line 4–i to line 4–g x line 4–h.

Copies of the revised page can be obtained by calling Jeff Warren (202 927–6243) or Ward L. Ginn (202 927–5740).

TDD for the Hearing impaired: (202 927–5721). This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31574 Filed 12–22–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32621]

Kyle Railways, Inc.—Continuance in Control Exemption—SWKR Operating Co., Inc.

Kyle Railways, Inc. (Kyle), has filed a notice of exemption to continue in control of SWKR Operating Co., Inc. (SWKR), upon SWKR becoming a common carrier railroad.

SWKR, a noncarrier, has concurrently filed a notice of exemption in *SWKR Operating Co., Inc.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.*, Finance Docket No. 32620, to acquire and operate 84.9 miles of rail line in Cochise County, AZ, owned by Southern Pacific Transportation Co. (SPT).

Kyle controls eight other rail carriers: Yreka Western Railroad Co.; California Western Railroad Company; Idaho Western Railway Company; Kyle Railroad Company; Eastern Alabama Railway; Arizona Eastern Railway Company; San Joaquin Valley Railroad Co.; and Port Railroads, Inc.

Kyle indicates that: (1) the SWKR does not connect with any other rail carrier it controls; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, Suite 750 West, 1100 New York Ave., N.W., Washington, D.C. 20005.

Decided: December 16, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31571 Filed 12–22–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 172X)]

Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Los Angeles County, CA

[Docket No. AB–409 (Sub-No. 4X)]

Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA

The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10906 the discontinuance of service by Southern Pacific Transportation Company on a 2.40 mile segment of the Burbank Branch from, milepost 463.80, at or near the North Hollywood rail station to milepost 466.20, at or near the Burbank rail station, in Los Angeles County, CA. The exemption is granted subject to standard labor protective conditions. The Commission also imposes standard labor protective conditions on the abandonment of the same line segment by the Los Angeles County Metropolitan Transit Authority.

Any comments must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

This exemption is effective upon publication in the **Federal Register**. Formal expressions of intent to file an offer of financial assistance and requests for a public use condition will not be accepted. Petitions to reopen must be filed by January 17, 1995. For further information, contact Joseph H. Dettmar, (202) 927–5660.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., room 2229, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: December 1, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31572 Filed 12–22–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32620]

SWKR Operating Co., Inc.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.

SWKR Operating Co., Inc. (SWKR), a noncarrier, has filed a notice of exemption to acquire and operate 84.9 miles of rail line owned by Southern Pacific Transportation Co. (SPT), extending from milepost NA 1032.84 at Benson to the end of the line at milepost N 1107.96 at Douglas[1] (Douglas Branch) and extending from milepost 1085.0 at Bisbee Jct. to the end of the line at milepost 1090.6 at Bisbee (Bisbee Branch), in Cochise County, AZ.[2] The transaction was expected to be consummated on or after December 1, 1994.

This proceeding is related to *Kyle Railways, Inc.—Continuance in Control Exemption—SWKR*, Finance Docket No. 32621, wherein Kyle Railways, Inc. has concurrently filed a notice of exemption to continue in control of SWKR when it becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 750 West, 1100 New York Ave., N.W., Washington, DC 20005.

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[1] The milepost designation changes at Fairbank from milepost NA 1050.57 to milepost N 1046.39.

[2] The rail lines to be acquired by SWKR from SPT have been leased by SPT to San Pedro & Southwestern Railway Co. (San Pedro), pursuant to the notice of exemption in *San Pedro & Southwestern Railway Co.—Acquisition and Operation Exemption—Southern Pacific Transportation Co.*, Finance Docket No. 32084 (ICC served June 30, 1992). It was San Pedro's intent to acquire the lines and was leasing them in the interim. Because San Pedro has been unable to acquire the lines, it has granted SPT a power of attorney to make all necessary filings with the Commission to terminate the existing lease. Pursuant to the power of attorney from San Pedro, SPT and SWKR will enter into an agreement under which the lease to San Pedro to operate the SPT lines will be assigned to SWKR. Under the circumstances, San Pedro will not be required to seek Commission approval to terminate operations over the line. See, *Caldwell County Railroad Company—Lease, Operation, and Acquisition Exemption—Norfolk Southern Railway Company*, Finance Docket No. 32584 (ICC served Oct. 19, 1994).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31573 Filed 12–22–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Department of Justice Procurement Blanket Clearance.

(2) Form: None. Office of the Procurement Executive, Justice Management Division.

(3) On occasion.

(4) Businesses or other for-profit, Non-profit institutions, or Small businesses or Organizations. Code of Federal Regulations 48 requires contractors to submit data in response to solicitation requirements. These representations and certifications pertain to the contractors business status and eligibility for contract award.

(5) 3,000 respondents at 20 hours per response.

(6) 60,000 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: December 20, 1994.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–31550 Filed 12–22–94; 8:45 am]

BILLING CODE 4410–26–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

New Collection

(1) Application for Certification as a Designated Outside Entity to Take Fingerprints.

(2) I–850. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, State or Local Governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, or Small businesses or Organizations. This form will be used by the Immigration and Naturalization Service to obtain information concerning entities (persons, businesses, voluntary agencies or police departments) which seek status as a designated outside entity (DOE) to prepare Form FD–258, Applicant Card, for submission in connection with applications for benefits under various immigration statutes.

(5) 3,000 respondents at 2.66 hours per response.

(6) 7,998 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: December 19, 1994.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–31551 Filed 12–22–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC

Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

New Collection

(1) Attestation by Designated Outside Entities Certified to take Fingerprints.
(2) I–850A. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households, Business or other for-profit, Federal agencies or employees, Non-profit institutions, or Small businesses or Organizations. Form FD–258, Applicant Card, will be prepared by designated outside entities (DOE's) and contains only information required by the Federal Bureau of Investigation to process the card: since verification of the identity of the party preparing Form FD–258 and monitoring the conditions of authorization requires additional information, this form (I–850A) will be used by the Immigration and Naturalization Service to obtain this additional information.
(5) 1,060,000 respondents at .166 hours per response.
(6) 175,960 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: December 19, 1994.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–31552 Filed 12–22–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Application to Pay Off or Discharge Alien Crewman.
(2) Form I–408. Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for profit. Required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or agent of vessel or aircraft to discharge or pay off alien crewman in the United States.
(5) 85,000 annual respondents at .25 hours per response.
(6) 21,250 annual burden hours.
(7) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: December 19, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–31553 Filed 12–22–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of

Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Intracompany Transferee Certificate of Eligibility (For Blanket Petitions Only).

(2) Form I-129S, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households, Businesses or other for-profit. This form is for an employer to petition for temporary workers as an L–1, Nonimmigrant Intracompany Transferees, under a blanket L petition approval.

(5) 500 annual respondents at .60 hours per response.

(6) 300 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: December 19, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–31554 Filed 12–22–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA940005 (Feb. 11, 1994)
- MA940007 (Feb. 11, 1994)
- MA940008 (Feb. 11, 1994)
- MA400009 (Feb. 11, 1994)
- MA940010 (Feb. 11, 1994)
- MA940013 (Feb. 11, 1994)
- MA940017 (Aug. 12, 1994)
- MA940020 (Aug. 19, 1994)
- MA940021 (Aug. 19, 1994)

Volume II

Maryland
- MD940006 (Feb. 11, 1994)
- MD940035 (Feb. 11, 1994)
- MD940039 (Feb. 11, 1994)
- MD940053 (Feb. 11, 1994)

Pennsylvania
- PA940014 (Feb. 11, 1994)
- PA940040 (Feb. 11, 1994)

Virginia
- VA940008 (Feb. 11, 1994)
- VA940039 (Feb. 11, 1994)
- VA940046 (Feb. 11, 1994)
- VA940051 (Feb. 11, 1994)
- VA940064 (Feb. 11, 1994)
- VA940108 (Apr. 15, 1994)

Volume III

Georgia
- GA940004 (Feb. 11, 1994)
- GA940031 (Feb. 11, 1994)
- GA940033 (Feb. 11, 1994)
- GA940050 (Feb. 11, 1994)
- GA940062 (Feb. 11, 1994)
- GA940069 (Feb. 11, 1994)

Volume IV

Michigan
- MI940001 (Feb. 11, 1994)
- MI940002 (Feb. 11, 1994)
- MI940003 (Feb. 11, 1994)
- MI940004 (Feb. 11, 1994)
- MI940005 (Feb. 11, 1994)
- MI940007 (Feb. 11, 1994)
- MI940012 (Feb. 11, 1994)
- MI940017 (Feb. 11, 1994)

MI940031 (Feb. 11, 1994)
MI940034 (Feb. 11, 1994)
MI940036 (Feb. 11, 1994)
MI940040 (Feb. 11, 1994)
MI940041 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
MI940047 (Feb. 11, 1994)
MI940049 (Feb. 11, 1994)

Volume V

Iowa
IA940003 (Feb. 11, 1994)
New Mexico
NM940001 (Feb. 11, 1994)
NM940005 (Feb. 11, 1994)
Kansas
KS940007 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940013 (Feb. 11, 1994)
KS940014 (Feb. 11, 1994)
KS940016 (Feb. 11, 1994)
Nebraska
NE940003 (Feb. 11, 1994)
NE940009 (Feb. 11, 1994)
NE940011 (Feb. 11, 1994)

Volume VI

Arizona
AZ940001 (Feb. 11, 1994)
AZ940002 (Feb. 11, 1994)
AZ940003 (Feb. 11, 1994)
AZ940004 (Feb. 11, 1994)
AZ940010 (Feb. 11, 1994)
AZ940011 (Feb. 11, 1994)
AZ940014 (Feb. 18, 1994)
AZ940016 (Feb. 18, 1994)
AZ940017 (Mar. 11, 1994)
California
CA940004 (Feb. 11, 1994)
Nevada
NV940002 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th Day of December 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94-31346 Filed 12-22-94; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments; Correction.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on fiscal year 1994 data and reflect changes in approval processing operations, as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1995 through December 31, 1995. Approval applications postmarked before January 1, 1995 will be chargeable under the fee schedules as published on December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Peter M. Turcic, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: MSHA published a Notice of Fee Adjustments in the **Federal Register** on December 9, 1994 (59 FR 63825). This notice inadvertently omitted text. Rather than publish a correction notice containing only the omitted text, the Agency is republishing the fee schedule in its entirety for the convenience of the reader.

In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

Dated: December 20, 1994.

J. Davitt McAteer,

Assistant Secretary, Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995

[Based on FY 1994 data]

	Action title	Hourly rate	Flat rate	Application fee
	30 CFR Part 7—Product Testing by Third Party			
12	Approval Evaluations—Battery Assemblies	43	.....	100
12	Approval Evaluation—Brattice and Ventilation Tubing	50	.....	100
12	Approval Evaluation—Multiple-Shot Blasting Units	43	.....	100
12	Approval Evaluation—Electric Motor Assemblies [1]	43	.....	100
12	Approval Evaluation—Electric Cables and Splice Kits	49	.....	100
14	Approval Extension—Batteries Assemblies	42	.....	100
14	Approval Extension—Brattice and Ventilation Tubing	48	.....	100
14	Approval Extension—Multiple-Shot Blasting Units	42	.....	100
14	Approval Extension—Electric Motor Assemblies [1]	42	.....	100
14	Approval Extension—Electric Cables and Splice Kits	48	.....	100
40	Stamped Notification Acceptance Program (SNAP)	.....	278	.....
	30 CFR Part 15—Explosives			
12	Approval Evaluation [2]	47	.....	100
	Permissibility Tests for Explosives:			
	Weigh-in	.....	420	.....

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995—Continued

[Based on FY 1994 data]

	Action title	Hourly rate	Flat rate	Application fee
	Physical Exam: First size		295	
	Chemical Analysis		1,797	
	Air Gap—Minimum Product Firing Temperature		418	
	Air Gap—Room Temperature		320	
	Pendulum Friction Test		148	
	Detonation Rate		320	
	Gallery Test 7		6,760	
	Gallery Test 8		5,030	
	Toxic Gases (Large Chamber)		732	
	Permissibility Tests for Sheathed Explosives:			
	Physical Examination		128	
	Chemical Analysis		1,044	
	Gallery Test 9		1,944	
	Gallery Test 10		1,944	
	Gallery Test 11		1,944	
	Gallery Test 12		1,944	
	Drop Test		648	
	Temperature Effects/Detonation		672	
	Toxic Gases		580	
14	Approval Extension	47		100
	30 CFR Part 18—Electric Motor Driven Equipment and Accessories			
12	Approval—Machine Evaluation[2]	49		100
	Approval—Machine Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
12	Approval—Instrument (testing included)	47		100
14	Approval Extension—Machine Evaluation[2]	48		100
	Approval Extension—Machine Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
14	Approval Extension—Instruments (testing included)	47		100
15	Acceptance Evaluation[2]	46		100
	Acceptance Testing:			
	Explosion Test	41		
	Wall Thickness Test	51		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
	Compressibility Test (asbestos substitutes)	51		
16	Certification Evaluation[2]	41		100
	Certification Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
17	Acceptance Extension[2]	46		100
	Product Flame Test	48		
18	Certification Extension[2]	41		100
	Certification Extension Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
21	Field Modification[2]	50		100
	Field Modification Testing:			
	Explosion Test	41		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995—Continued

[Based on FY 1994 data]

	Action title	Hourly rate	Flat rate	Application fee
	Arc Ignition Test	51		
23	Field Approval		255	
26	Permit—Machines[2]	47		100
	Permit Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
26	Permit—Instruments (testing included)	47		100
30	Intrinsic Safety Determination (testing included)	51		100
31	Intrinsic Sagety Determination Extension (testing included)	51		100
32	Simplified Certification[2]	43		100
	Simplified Certification Testing:			
	Simplified Certification Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
34	Simplified Certification Extension[2]	40		100
	Simplified Certification Extension Testing:			
	Explosion Test	41		
	Surface/Temperature Test	43		
	Impact Test	39		
	Thermal Shock Test	40		
	Product Flame Test	48		
40	Stamped Notification Acceptance Program (SNAP)		278	
41	Longwall Approval[2]	49		100
	Longwall Approval Testing:			
	Explosion Test	41		
	Thermal Shock Test	40		
	Impact Test	39		
	Product Flame Test	48		
	Arc Ignition Test	51		
42	Longwall Approval Extension[2]	49		
	Longwall Approval Extension Testing:			
	Explosion Test	41		
	Thermal Shock Test	40		
	Impact Test	39		
	Product Flame Test	48		
	Arc Ignition Test	51		
45	Shearer Evaluation[2]	50		100
	Shearer Evaluation Testing:			
	Explosion Test	41		
	Thermal Shock Test	40		
	Impact Test	39		
	Product Flame Test	48		
	Arc Ignition Test	51		
46	Shearer Evaluation Extension[2]	50		100
	Shearer Evaluation Extension Testing:			
	Explosion Test	41		
	Thermal Shock Test	40		
	Impact Test	39		
	Product Flame Test	48		
	Arc Ignition Test	51		
47	Permit—Extension of TIme		91	
48	Permit Modification—Machine	47		100
48	Permit MOdification—Instrument (testing included)	47		100
	30 CFR Part 19—Electric Cap Lamps			
12	Approval (testing included)	46		100
14	Approval Extension (testing included)	46		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 20—Electric Mine Lamps			
12	Approval (testing included)	44		100
14	Approval Extension (testing included)	44		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995—Continued

[Based on FY 1994 data]

	Action title	Hourly rate	Flat rate	Application fee
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 21—Flame Safety Lamps			
12	Approval (testing included)	47		100
14	Approval Extension (testing included)	47		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 22—Portable Methane Detectors			
12	Approval (testing included)	48		100
14	Approval Extension (testing included)	48		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 23—Telephones and Signaling Devices			
12	Approval (testing included)	50		100
14	Approval Extension (testing included)	50		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 24—Single Shot Blasting Units			
12	Approval (testing included)	51		100
14	Approval Extension (testing included)	51		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 26—Lighting Equipment for Illumination			
12	Approval (testing included)	50		100
14	Approval Extension (testing included)	50		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 27—Methane Monitoring Systems			
16	Certification (testing included)	51		100
18	Certification Extension (testing included)	47		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 28—D.C. Current Fuses			
12	Approval (testing included)	51		100
14	Approval Extension (testing included)	51		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 29—Portable Dust Analyzers and Methane Monitors			
12	Approval (testing included)	47		100
14	Approval Extension (testing included)	47		100
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 31—Diesel Mine Locomotives			
12	Approval	46		100
14	Approval Extension	46		100
	30 CFR Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines			
12	Approval	46		100
14	Approval Extension	46		100
16	Certification Evaluation[2]	48		100
	Certification Testing:			
	Emissions Test	51		
	Pre/Post Test Preparation	49		
18	Certification Extension Evaluation[2]	46		100
	Certification Extension Testing:			
	Emissions Test	51		
	Pre/Post Test Preparation	49		
	30 CFR Part 33—Dust Collectors			
12	Approval Evaluation without Certification of Performance[2]	49		100
	Approval Testing:			
	Dust Collector Test	51		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995—Continued

[Based on FY 1994 data]

	Action title	Hourly rate	Flat rate	Application fee
14	Approval Extension Evaluation[2]	49		100
	Approval Extension Testing:			
	Dust Collector Test	51		
16	Certification Evaluation[2]	49		100
	Certification Testing:			
	Dust Collector Test	51		
18	Certification Extension[2]	49		100
	Certification Extension Testing:			
	Dust Collector Test	51		
21	Field Modification	49		100
29	Dust Collector Approval with Certification of Performance		194	
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 35—Fire-Resistant Hydraulic Fluids			
12	Approval (testing included)	46		100
14	Approval Extension (testing included)	45		100
	30 CFR Part 36—Mobile Diesel-Powered Equipment			
12	Approval	51		100
14	Approval Extension	49		100
16	Certification—Engine Evaluation[2]	46		100
	Certification—Engine Testing:			
	Emissions Test	48		
	Explosion Test	50		
	Surface Temperature/Safety Controls Test	49		
	Pre/Post Test Preparation	46		
18	Certification Extension—Engine Evaluation[2]	46		100
	Certification Extension—Engine Testing:			
	Emissions Test	48		
	Explosion Test	50		
	Surface Temperature/Safety Controls Test	49		
	Pre/Post Test Preparation	46		
21	Field Modification	49		100
27	Certification—Diesel Components Evaluation[2]	47		100
	Certification—Diesel Components Testing:			
	Emission Test	48		
	Explosion Test	50		
	Water Consumption/Cooling Efficiency Test	52		
	Surface Temperature	49		
	Safety Control Test	49		
	Pre/Post Test Preparation	46		
28	Certification Extension—Diesel Components Evaluation[2]	47		100
	Certification Extension—Diesel Components Testing.			
	Emission Test	48		
	Explosion Test	50		
	Water Consumption/Cooling Efficiency Test	52		
	Surface Temperature	49		
	Safety Control Test	49		
	Pre/Post Test Preparation	46		
40	Stamped Notification Acceptance Program (SNAP)		278	
	30 CFR Part 74—Coal Mine Dust Personal Sampler Units			
12	Approval	47		100
00	Other A&CC Services.			
15	Acceptance—Overcurrent Relays (testing included)	46		100
15	Statement of Test and Evaluation (ST&E)		38	
15	Material Acceptance (testing included)	46		100
15	Monitor and Power System (MAPS) (testing included)	48		100
15	Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	46		100
17	Acceptance Extension—Overcurrent Relays	46		100
17	Acceptable Extension—Interim Criteria	46		100
17	Statement of Test and Evaluation (ST&E) Extension		23	
17	Material Acceptance Extension (testing included)	46		100
17	Acceptance Extension—Ground Check Monitor/Ground Wire Devices	46		100
20	Stamped Revision Acceptance (SRA)[3]		260	
24	Acceptance—Panic Bar	46		100
33	Generic Statement of Test and Evaluation (ST&E)	47		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1995—Continued

[Based on FY 1994 data]

Action title	Hourly rate	Flat rate	Application fee
35 Administration Records Update	15		NONE
37 Acceptance—Interim Criteria [2]	46		100
Interim Criteria Testing:			
Product Flame Test	48		
40 Stamped Notification Acceptance Program (SNAP)—Ground Check Monitor/Ground Wire Device/ Overcurrent Relay		278	
40 Stamped Notification Acceptance Program (SNAP) ST&E		23	
41 Approval—Longwall Area Lighting	48		100
42 Approval Extension—Longwall Area Lighting	46		100
50 Mine Wide Monitoring System (MWMS) Evaluation	49		100
52 Mine Wide Monitoring System (MWMS) Barrier Classification		179	
54 Mine Wide Monitoring System (MWMS) Sensor Classification		261	
00 Retesting for Approval as a Result of Post-Approval Product Audit [4]			

[1] Electric motor assemblies final rule was issued February 22, 1993. The phase-in period for this program is 3 years.
[2] Full approval fee consists of evaluation cost plus applicable test costs.
[3] Fee covers SRA application accompanied by up to five documents.
[4] Fee based upon the approval schedule in effect at the time of retest.
Note: When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 94–31592 Filed 12–22–94; 8:45 am]
BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Licensing Support System Advisory Review Panel (LSSARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose is to provide advice to (1) the Department of Energy on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and (2) the Nuclear Regulatory Commission on the operation and maintenance of the system. This electronic information management system is known as the Licensing Support System (LSS).

Membership on the Panel is drawn from those interests that will be affected by the use of the LSS, including the Department of Energy, the NRC, the State of Nevada, Tribal interests, affected units of local governments in Nevada, and the nuclear industry. Federal agencies with expertise and experience in electronic information management systems also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSSARP until December 19, 1996 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 504–1963.

Dated: December 19, 1994.

Andrew L. Bates,

Advisory Committee Management Officer

[FR Doc. 94–31570 Filed 12–22–94; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 40–8681 (License No. 1358)]

Energy Fuels Nuclear, Inc.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards (Director), has issued a decision concerning a Petition dated May 2, 1994, submitted by the Honorable Michael O. Leavitt, Governor of the State of Utah, and the Utah State Legislature pursuant to 10 CFR 2.206.

The Petition requested that the U.S. Nuclear Regulatory Commission modify Source Material License No. SUA–1358 to limit authority of the Licensee, currently Energy Fuels Nuclear, Inc. (Umetco Minerals Corporation when the Petition was submitted), to dispose of Section 11.e.(2) material at the White Mesa Uranium Mill facility to 5,000 cubic yards per single source. The Petition also requested that the NRC confer with the State of Utah and provide opportunity for comment prior to the issuance of license amendments involving uranium mill tailings disposal in Utah. Finally, Petitioners requested that the NRC obtain the concurrence of the Governor and Legislature of the State of Utah before issuing license amendments involving disposal of uranium mill tailings in Utah.

After review of the Petition, the Director has determined to grant Petitioners' request to modify Source Material License No. SUA–1358. Petitioners' request to confer with the State of Utah was granted insofar as the NRC shall provide to the State of Utah direct and **Federal Register** notice of significant materials license applications concerning NRC-licensed activity in the State of Utah, and thereby provide an opportunity to comment. Petitioners' request that the NRC obtain the concurrence of the State of Utah before taking licensing actions involving mill tailing disposal in the State of Utah was denied. The reasons for this Decision are explained in a "Director's Decision Under 10 C.F.R. § 2.206" (DD–94–10), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R. § 2.206. As provided by this regulation,

the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 14th day of December, 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Appendix A to this document—Director's Decision Under 10 CFR 2.206

I. Introduction

The Honorable Michael O. Leavitt, Governor of the State of Utah, and the Utah Legislature (Petitioners) submitted a letter dated May 2, 1994, and a copy of Utah Senate Concurrent Resolution No. 11, "RESOLUTION REGARDING NRC ACTION REGARDING DISPOSAL OF URANIUM BY-PRODUCT 1994 GENERAL SESSION" (Petition) pursuant to 10 CFR § 2.206, in regard to Amendment No. 33 to Umetco Minerals Corporation (Umetco) Source Material License No. SUA–1348, which authorized disposal of up to 10,000 cubic yards (cy) of 11e.(2) byproduct material per in situ leach (ISL) facility per year at the White Mesa Uranium Mill facility. Petitioners request that the "* * * NRC reconsider the license amendment issued to Umetco and modify the amendment to reflect the original request of 5,000 cubic yards [cy] [per in situ facility]." Petitioners assert as the basis for this request that the NRC in effect created the equivalent of a commercial waste disposal facility for in situ mining waste unlicensed by Utah, while ignoring Utah's waste policy and laws. Petitioners also urge the NRC to confer with the State of Utah and provide opportunity for comment prior to the issuance of license amendments involving uranium mill tailings disposal in Utah. Finally, Petitioners request that the NRC obtain the concurrence of the Utah Governor and Legislature before issuing license amendments involving disposal of uranium mill tailings in Utah. By letter dated May 13, 1994, the State of Utah was notified that the Petition was under review and that a response would be provided in a timely manner.

The Petition has been reviewed on its merits, and as a result of this review, for the reasons stated below, Petitioners' request to modify Source Material License No. SUA–1358 is granted. Petitioners' request that the NRC confer with Petitioners before taking action on future license amendments involving disposal of uranium mill tailings in Utah is granted, insofar as the NRC shall provide notice of significant materials licensing actions in the State of Utah, such as for authorization to dispose of in situ leach facility 11e.(2) byproduct material or for approval of significant changes to an approved reclamation plan, and thereby provide an opportunity to comment. Petitioners' request that the NRC obtain the concurrence of the State of Utah before issuing license amendments involving mill tailing disposal in the State of Utah is denied.

II. Background

On February 6, 1978, Energy Fuels Nuclear, Inc. (EFN) submitted an application for a source material license for the proposed White Mesa Mill. The NRC issued an Environmental Impact Statement (EIS) for White Mesa Mill in May 1979. In August of 1979, NRC issued Source Material License SUA–1358 to EFN. The White Mesa Mill operated on a continuous basis from August 1979 through February 1983 when operations were suspended. In January of 1984 Umetco purchased a controlling interest in the White Mesa Mill from EFN. The license was amended on December 5, 1984, to reflect the change in ownership and Umetco's status as the licensee. Production resumed in October 1985 and the White Mesa Mill has alternately operated and been on standby mode until the present time. EFN recently repurchased the controlling interest in the White Mesa Mill, and on May 25, 1994, the NRC staff issued License Amendment No. 35, authorizing the transfer of ownership to EFN, the current licensee.

By letter dated May 20, 1993, Umetco submitted an application for a license amendment to authorize the receipt and disposal of 11e.(2) byproduct material from NRC-licensed and Agreement State-licensed in situ leach facilities. Byproduct material, under Section 11e.(2) of the Atomic Energy Act of 1954, as amended, is defined as "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." Specifically, Umetco requested that Source Material License No. SUA–1358 be amended to authorize:

> disposal of not more than 5,000 cubic yards of 11e.(2) byproduct material per generating [in situ] licensee. If Umetco received a request to dispose of more than 5,000 cubic yards of 11e.(2) byproduct material, Umetco would notify URFO [NRC's Uranium Recovery Field Office [1]] in writing so that the appropriate review and approval could be received from the URFO staff prior to executing a contract [contract].

The NRC staff reviewed Umetco's license amendment application and issued License Amendment 33 on August 2, 1993.[2] License Amendment 33 authorized, through License Condition 55, the disposal of:

> byproduct material generated at licensed in situ leach facilities, subject to the following condition that:
>
> A. Disposal of [11e.(2) byproduct material] in excess of 10,000 cubic yards per year from single sources shall require specific approval from NRC.

The NRC staff concluded that License Condition 55 would not result in significant impacts to the environment or to public health and safety. Further, the staff concluded that License Condition 55 was consistent with 10 CFR Part 40, Appendix A, Section I, Criterion 2, which is intended to avoid the proliferation of small waste disposal sites, which would result if disposal in large tailings systems were not authorized.

III. Discussion

A. License Condition 55

Petitioners contend that License Condition 55, which allows Umetco to dispose of up to 10,000 cy of in situ leach 11e.(2) byproduct material per year at the White Mesa facility annually from any source, in effect creates the equivalent of a commercial disposal facility for in situ leach 11e.(2) byproduct material in Utah. Petitioners, therefore, requested that License Condition 55 be modified "* * * to reflect the original request of 5,000 cubic yards [per in situ facility]."

The NRC Staff agrees with the Petitioners that the Licensee's authorization to dispose of 11e.(2) byproduct material should be limited to the 5,000 cy per in situ leach facility requested by the Licensee. By way of background, however, it should be noted that License Amendment No. 33 authorized disposal of 11e.(2) byproduct material consistent with NRC regulations, which require that 11e.(2) byproduct material from in situ leach mines be disposed of at uranium mill tailings facilities. 10 C.F.R. Part 40,

[1] The Uranium Recovery Field Office closed on August 3, 1994 and the responsibility for uranium recovery licensing was transferred to the NRC's Office of Nuclear Material Safety and Safeguards, Division of Waste Management.

[2] Envirocare of Utah, Inc. requested a hearing on License Amendment 33 which was denied on the grounds of timeliness. *Umetco Minerals Corporation*, Memorandum and Order, ASLBP No. 94–688–01–MLA–2 (March 4, 1994)

Appendix A, Section I, Criterion 2. Also, the byproduct material authorized for disposal at the White Mesa Mill represents only a subset of radioactive waste materials. Specifically, White Mesa Mill is authorized to dispose of only 11e.(2) byproduct material (mill tailings), and 11e.(2) byproduct material only from in situ leach facilities. Before EFN could dispose of 11e.(2) byproduct material other than that from its own operations or from in situ leach facilities, EFN would be required to seek licensing authority to do so. In addition, the 10,000 cubic yards per in situ leach facility per year authorized for disposal by License Amendment 33 at White Mesa Mill was insubstantial in comparison to the 2000 tons [1481 cy] per day for 15 years contemplated in the original licensing of White Mesa Mill. "Final Environmental Statement Related to Operation of White Mesa Uranium Project" (May 1979) NUREG 0556, p. iii.

Although License Amendment No. 33 would not have resulted in the disposal of byproduct waste material in amounts approaching that contemplated at the time of the original license grant for the White Mesa Mill facility, License Condition 55 did authorize disposal of more 11e.(2) byproduct material than was requested by the Licensee. The NRC practice is, generally, to grant only the disposal authority requested by the license amendment application, and no more. During an October 20, 1994 discussion with the NRC staff, the Licensee agreed to issuance of an order to modify the License to reflect the application for authority to dispose of 5,000 cy of 11e.(2) byproduct material per in situ facility. Accordingly, for the reasons stated above, the License will be so modified by a "Confirmatory Order Modifying License Condition 55" to be issued concurrently with this Decision.

B. Requests to Confer with and to Obtain Concurrence of Petitioners

Petitioners request that the NRC confer with the State of Utah and provide opportunity to comment prior to the issuance of license amendments involving uranium mill tailing disposal in Utah. The same request was made previously by Mr. William J. Sinclair, Director of the Division Radiation Control, Utah Department of Environmental Quality, in his January 27, 1994, letter. In a February 25, 1994, response to Mr. Sinclair, the Director, Office of Nuclear Material Safety and Safeguards, made several commitments designed to foster better communication with the State of Utah concerning NRC regulation of uranium tail processing mills in Utah. Specifically, the NRC committed to notify the State directly, in addition to the issuance of a **Federal Register** Notice (FRN), upon the receipt of, and also upon the final resolution of license amendment applications for significant materials licensing actions in the State of Utah, such as for authorization to dispose of in situ leach facility 11e.(2) byproduct material or for approval of significant changes to an approved reclamation plan.[3] An FRN issued upon receipt of a significant license amendment application serves notice, under 10 CFR § 2.1205(c)(1), that interested parties have 30 days to file a petition for hearing, and thus provides interested parties, such as the State of Utah, an opportunity to comment upon the license amendment application. The FRN issued at the final resolution of the license amendment is informational. In addition, where the license amendment application raises significant or controversial issues, NRC would be willing to attend public meetings, as appropriate. Accordingly, Petitioners' request for an opportunity to confer with the NRC and to comment before issuance of license amendments involving uranium mill tailing disposal in Utah is granted, to the extent indicated above.

As explained above, the NRC will make every effort to obtain the views and comments of the State of Utah before taking action upon license applications for authority to dispose of uranium mill tailings in Utah. Although the NRC welcomes and will closely consider the State of Utah's comments, it would be inconsistent with the Sections 63, 81 and 84 of the Atomic Energy Act of 1954, as amended, to grant Petitioners' request that the NRC obtain the concurrence of the Governor and the Legislature of the State of Utah before issuing license amendments authorizing disposal of uranium mill tailings in Utah.[4] Accordingly, this request is denied.

IV. Conclusion

For the reasons discussed above, Petitioners' request to modify Source Material License No. SUA-1358 is granted, and will be effected by a "Confirmatory Order Modifying License 55" to be issued concurrently with this Decision. Petitioners' request that the NRC confer with the State of Utah before issuing license amendments involving mill tailing disposal in Utah is granted to the extent that both direct and **Federal Register** notice of all applications for significant materials licensing actions in Utah will be given to the State of Utah, thus providing the State of Utah with an opportunity to comment. Petitioners' request that the NRC obtain the State of Utah's concurrence before issuing license amendments concerning uranium mill tailing disposal in Utah is denied for the reasons discussed above.

A copy of this Decision will be filed with the Secretary for the Commission to review as provided in 10 CFR § 2.206(c). The Decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 14th day of December 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-31568 Filed 12-22-94; 8:45 am]

BILLING CODE 7590-01-P

[Docket 70-08]

Battelle Memorial Institute, Columbus Operations, Columbus, OH; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated December 28, 1993, submitted by the Battelle Permit Opposition Committee regarding the Battelle Memorial Institute (BMI), Columbus, Ohio facility.

The NRC Office of Nuclear Material Safety and Safeguards noticed the Petition for consideration under 10 CFR 2.206. The Petition requested that the U.S. Nuclear Regulatory Commission investigate the findings of a July 1992 audit of decontamination and decommissioning at BMI and to take appropriate enforcement action.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to grant the Petition. The reasons for this Decision are explained in the "Director's Decision Under 10 CFR 2.206" (DD-94-11), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in

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[3] Although the NRC is not legally required to provide such notice, *City of West Chicago v. NRC*, 701 F.2d 632 (7th Cir. 1983), such notice would enhance communication with the State of Utah and material licensing decisions.

[4] Petitioners, nonetheless, may acquire authority to regulate Section 11e.(2) byproduct material, and thus to regulate the disposal of uranium mill tailings in Utah, through the agreement process pursuant to Section 274 of the Atomic Energy Act, as amended.

accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 14th day of December 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Appendix A to this document—Director's Decision Under 10 CFR 2.206

I. Introduction

On December 28, 1993, the Battelle Permit Opposition Committee (BPOC) filed a Petition for an investigation[1] of certain audit findings involving Battelle Memorial Institute (BMI) and for enforcement action, as appropriate. The referenced audit findings are the product of an independent audit commissioned by BMI and performed by ATEC Associates, Inc. The Petition states that BMI appears to be a facility out of control in its handling of radioactive material, a potential threat exists to the neighborhood through BMI's operations, and the level of Nuclear Regulatory Commission (NRC) oversight of BMI activities is of concern.

By letter dated March 17, 1994, the NRC acknowledged receipt of the request for an investigation and appropriate enforcement action, and informed the requester that the letter would be treated as a Petition in accordance with the provisions of 10 CFR 2.206 of the Commission's regulations and that a decision would be issued within a reasonable time.

I have now completed my evaluation of the matters raised by the Petitioner and have determined that, for the reasons stated in this Decision, the Petitioner's request for an inspection and appropriate enforcement action for the deficiencies identified by the audit is granted.

II. Background

In July 1992, BMI hired ATEC Associates, Inc., a contractor, to conduct an independent safety inspection or safety audit of BMI's radiation protection program. This audit focused on BMI's research and development program. The audit was self-initiated and was designed to be critical in nature. The audit evaluated the radiation protection program against NRC, Department of Energy (DOE), and Occupational Safety and Health Administration (OSHA) requirements, as well as other good control practices. Approximately 240 person-hours were devoted by the contractor in performing this audit. The audit identified 201 deficiencies or weaknesses in the program. The results were provided to the BPOC.

III. Discussion

In the Petition, the Petitioner requests the Commission to "investigate" the findings of the audit and to take appropriate enforcement action to assure that the BMI's facility is operated in compliance with applicable requirements. In response, during the period January 31 through March 25, 1994, a special safety team inspection was conducted at the BMI's King Avenue, Columbus, Ohio, and West Jefferson, Ohio, facilities. Included in the inspection was a review of the three concerns cited by the BPOC in the Petition, as described below.

A. Control in Handling of Radioactive Material

The Petitioner states that BMI appears to be a facility out of control in its handling of radioactive material.

NRC Special Nuclear Materials License SNM–7 allows BMI to receive, possess, use, and transfer certain radioactive materials in the conduct of research and development, radiography, and decommissioning activities.

Compliance with license-required actions to control handling of radioactive material has been confirmed by NRC inspectors during safety inspections. This confirmation was achieved through direct observation of ongoing activities, interviews with licensee staff, and examination of licensee records. Specific areas examined included handling and storage of radioactive materials, disposition of waste and maintenance of records in support of licensed activities. In one area of research, BMI used animals for various studies on the effects of radioactive materials. NRC reviewed the disposition of the radioactive carcasses of these animals through incineration as general waste. Research records were reviewed (typically on a random spot check basis) and calculations performed to confirm that the radiation levels of the carcasses were below NRC limits and were, therefore, acceptable for incineration as general waste. Confirmation was achieved. With regard to the accuracy of measurements of radioactive materials handled by BMI, a review of the data recorded on the licensee's liquid scintillation verification form (used to verify that general waste met 10 CFR 20.2005 levels for radioactive materials in unrestricted areas) indicated that the licensee is meeting NRC requirements. (Results of these inspections were documented in Inspection Reports, including that described in special safety Inspection Report 070–00008/94001(DRSS) dated April 26, 1994.) Regarding storage, inspection tours of the King Avenue site (located in Columbus, Ohio) and West Jefferson, Ohio, site, confirmed that radioactive and hazardous materials were stored adequately.

BMI is also decontaminating and decommissioning (D & D) a series of buildings at the West Jefferson, Ohio, and King Avenue sites. The D & D activities began in 1986 and are scheduled to continue through the year 2000. The facilities undergoing D & D were toured by NRC inspectors, facility workers were interviewed, procedures were reviewed, and several radiological surveys were conducted by the inspectors. The NRC has concluded that the D & D work is being conducted in accordance with BMI's NRC license and applicable NRC regulations.

The July 1992, ATEC audit of BMI's program did identify four potential violations of NRC requirements. The violations were reviewed by NRC during the special inspection, and it was determined by the inspectors that these potential violations met the criteria for non-cited violations (as provided in 10 CFR Part 2, Appendix C) in accordance with the Commission's Enforcement Policy. Specifically, (1) they were corrected in a reasonable time, (2) were not repetitive violations, (3) were not willful violations, (4) were identified by the licensee, (5) were not violations that could reasonably be expected to have been prevented by the licensee' corrective action from a previous violation or licensing finding, and (6) were of such a nature that they would normally have been classified at Severity Level IV or V, which are the least significant severity levels. The violations were related to minor reporting, recordkeeping, and posting deficiencies that are not indicative of significant programmatic weaknesses. Consequently, NRC exercised discretion and considered these as non-cited violations. During the special inspection conducted during the period of January 31 through March 24, 1994, the NRC identified an additional Severity Level IV violation which involved a failure to properly secure or maintain surveillance over a radioactive source. This violation was in addition to those identified by the auditor. As a result of this additional

[1] The NRC interprets "investigation" in this context to mean a review through inspection as opposed to assessing potential wrongdoing.

finding, a Severity Level IV Notice of Violation (NOV) was issued on April 26, 1994, to BMI. A Severity Level IV violation is of relatively minor significance, but a potential exists for an adverse impact on health and safety. BMI responded with appropriate corrective actions as described in correspondence dated May 24, 1994.

The staff has concluded on the basis of the NRC's inspection and evaluation of BMI's radiological control program and ongoing D & D activities, that the licensee has implemented and is maintaining a radioactive materials handling program and radioactive waste management program that is adequate to protect the radiological safety of employees and the public. Although the ATEC audit reported 201 deficiencies and weaknesses, the NRC found that only a few were of regulatory significance, and the NRC took appropriate action, including enforcement action for the repetitive violation for failure to secure a laboratory. In order to identify deficiencies and correct them in a timely manner in the future, the staff supports licensees' efforts to aggressively perform self assessments such as the ATEC audit.

B. Threat to the Neighborhoods

The Petitioner states that a potential threat exists to the neighborhoods through BMI's operations.

As stated earlier, BMI uses radioactive materials in the conduct of research and development, radiography, tracer studies, and conducts decommissioning activities. The research and development activities include the use of small amounts of radioactive materials for tracer studies and the use of gas chromatographs which contain small amounts of radioactive materials. The radiography activities include the use of two sealed radioactive sources. An additional sealed source is possessed but is kept in storage for future use.

The decommissioning activities are a result of research work conducted as far back as the 1940's. BMI was contracted to perform research activities regarding the use of nuclear fuel and other nuclear materials. During the conduct of these research activities, small amounts of nuclear materials were unintentionally deposited on floors, walls, machines, and other items involved in the research. BMI is currently in the process of performing D & D on the equipment, work areas, and other items. This extensive effort is expected to be ongoing for several years.

With approval from the NRC and the DOE, BMI has developed and implemented procedures to safely D & D these items. The D & D activities are routinely inspected (average of once per year) by the NRC and DOE (through the DOE resident inspector) to ensure the safety of employees and the public. The inspections have shown that BMI is performing the D & D activities in accordance with its license.

Environmental monitors are located on the fence line of the BMI boundaries at the King Avenue site and West Jefferson site. Results of BMI's air monitoring, ground water sampling, sediment sampling, and vegetation analysis indicate that they are well within NRC regulations in 10 CFR Part 20 for release of radioactive materials. As such, the NCR has determined that the effluent releases pose no threat to the neighborhoods and are within NRC requirements.

Based on NRC's evaluation of the radiological safety environmental monitoring requirements in BMI's license and confirmation of BMI's compliance with those requirements through routine and special inspections, NRC staff concludes that BMI's radiological program is adequate to protect the radiological safety of employees and the public and is being conducted in accordance with applicable requirements.

C. NRC Oversight

The Petitioner states that because BMI has stated that it passed NRC inspections, the audit findings raise a concern over the level of oversight that BMI is receiving from the NRC. From the Petitioner's point of view, the large number of BMI audit findings calls into question the effectiveness of the NRC inspections.

NRC inspections at BMI over the past seven years have focused primarily on activities related to nuclear fuel-related issues and decommissioning activities, areas which were considered to be of the greatest health and safety significance. Twelve inspections were conducted at BMI from May 1986 until July 1993. These inspections identified two violations and two areas of concern [2] which were of minor health and safety significance. The items identified were evaluated and corrected in a timely manner. Two recent inspections, July and November 1993, identified no violations of NRC requirements.

During this seven year period, a limited review was performed by the NRC of the other research and development activities and the radiography program. These reviews included evaluations of data derived from records related to environmental monitoring, personnel exposures, environmental protection, waste management, the use of radioactive materials in field studies, and tracer studies. These reviews identified no additional problems.

The special inspection performed at BMI during the period January 31 through March 25, 1994, did not identify any violations of major safety significance in any of BMI's licensed activities covered by the ATEC audit. However, the special inspection made an additional finding of one potential violation due to failure to secure a laboratory that was a violation similar to one identified in the ATEC audit findings, and which was also of minimal safety significance. A Severity Level IV Notice of Violation was issued for this violation on April 26, 1994, as previously mentioned.

The special inspection identified one concern, namely, that the structure of BMI's license led to the emphasis by NRC on nuclear fuel-related and decommissioning activities. NRC has decided that more in-depth review and inspection of BMI's research and development activities and radiography program are appropriate, thus increasing the NRC oversight of this licensee. To effectively address these issues it was determined that responsibility for BMI's license should be transferred from NRC Headquarters to the Region III Office, and the license should be divided into

[2] May 12 through 16, 1986, One violation, no concerns:

One violation: 10 CFR 71.5(a), 49 CFR 173.411(b)(1)—greater than 200 mR/hr on outside of flatbed hauling radwaste to Barnwell. State of South Carolina identified the readings and the readings were corrected by BMI. NRC issued a NOV on June 12, 1986, after readings were identified by South Carolina and corrected by Battelle; therefore, no response to NOV was required because it was of minor health and safety significance and was immediately corrected once identified.

January 12 through 16, 1987 One violation, no concerns:

One violation: A retired reactor facility 10 CFR 50.10(a) license expired without a timely renewal. NRC determined that this was an administrative issue and of minor health and safety concern. A NOV was issued February 10, 1987. The renewal was submitted subsequently.

October 23 through 25, 1991. No violations, two concerns:

First concern: The bioassay data reviewed by the NCR revealed that two individuals had positive uptakes of U-238. BMI showed that these levels were below the 10 CFR Part 20 limits; therefore, no further action taken.

Second concern: An exit monitor was removed from a building being decontaminated. BMI replaced the monitor with friskers for personnel to use before leaving building. A portal monitor was then put in place for personnel to walk through prior to leaving the building. NRC determined that no further correspondence was necessary due to this corrective action.

three separate licenses, each addressing specific license areas. This decision was made when NRC staff concluded that previous inspections had been too sharply focussed on the nuclear fuel-related and decommissioning activities. Moving licensing responsibility to the Region III Office increased and diversified NRC inspection activities at the site. Responsibility was transferred on March 18, 1994.

With regard to the implications of previous oversight of BMI's licensed program, the NRC evaluated all 201 of the audit findings and determined that, as of the date of the special inspection (January 31–march 25, 1994), BMI adequately addressed all 201 of the ATEC audit findings and adequately resolved all but two of them as discussed in the following paragraphs. The BMI staff, during their review of the ATEC audit findings, found that two of the audit findings had broader implications that required further investigation. Specifically, these involved failure to secure a laboratory and accounting of radioactive sources.

NRC's review of the ATEC audit documentation determined that the description of the audit findings was vague, thus making it difficult to determine if some findings were related to NRC regulations or license conditions. As a result, the NRC took a conservative approach to these findings, and any finding that could be remotely related to NRC regulations or license conditions was considered a potential violation. These potential violations identified from the ATEC audit findings were then grouped into six categories to facilitate a determination of whether there were any violations of NRC requirements. The potential violations are as follows:

(A) Failure to inform the NRC on a timely basis of a Radiation Safety Officer (RSO) change;

(B) Failure to provide training to personnel;

(C) Failure to calibrate a survey instrument at the proper frequency;

(D) Failure to secure laboratories which contained radioactive materials;

(E) Failure to utilize the proper radiation postings; and

(F) Failure to account for radioactive sources.

At the time of the special inspection, which was initiated on January 31, 1994, Items D and F remained unresolved. Items A, B, C, and E are addressed below. In regards to Item D, the inspection determined that the failure to secure laboratories containing radioactive material had been corrected for those laboratories identified in the audit. However, during the special inspection another separate laboratory, not identified in the ATEC audit findings, was identified which was not properly secured in accordance with 10 CFR 20.1801 (see discussion above). This matter is discussed in Inspection Report 070–00008/94001(DRSS) dated April 26, 1994.

Item F, the inability to account for several sources, was reviewed in detail with the licensee. The BMI personnel contend that the sources were either properly disposed of as radioactive waste, transferred to an authorized recipient, or remain in storage in the hot cells awaiting decommissioning. Through the efforts of both the BMI personnel and the NRC, information was gathered demonstrating that this appears to be a recordkeeping issue. The information accumulated was based on NRC review of BMI documents and interviews with BMI personnel and other NRC licensees working in conjunction with BMI in the conduct of research activities. Based on our review, NRC is confident that the sources are not in the public domain or in an unrestricted area of the facility. The NRC will continue to monitor this issue during future inspections.

The remaining potential violations (Items A, B, C, and E) are being treated as non-cited violations and are detailed in the indicated sections of Inspection Report 070–00008/94001(DRSS) dated April 26, 1994, as discussed below:

Item A—Failure to inform the NRC on a timely basis of an RSO change (Section 3). The licensee changed the RSO without prior notification to or approval by the NRC, although an amendment request was submitted at a later date and approved. The finding was considered to be of an administrative nature, an isolated violation, was identified by BMI, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective actions by a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; was corrected in a reasonable time, and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a non-cited violation.

Item B—Failure to provide training to personnel (Section (7). The licensee identified that training was not being provided to personnel based upon the ATEC audit. That audit further identified the training issue was a recordkeeping problem. For example, training was provided, but records were not kept adequately. At least 30 BMI employees interviewed indicated that they were provided initial radiation safety training but, through administrative error, the training was not properly recorded in the BMI records. The finding was considered to be of minor health and safety significance, was corrected in a reasonable time, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; and was not a willful violation. Accordingly, the NRC exercised discretion and the finding was considered to be a non-cited violation.

Item C—Failure to calibrate a survey instrument at the proper frequency (Section 9). The BMI ATEC audit identified that one survey instrument out of approximately 50 possessed by BMI had not been calibrated for approximately one year. The licensee inventoried all survey instruments and initiated tracking of their calibration dates. The NRC reviewed and confirmed the license inventory. The finding was considered to be of an administrative nature, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding that occurred within the past two years of the inspection at issue, or the period within the last two inspections; was corrected in a reasonable time, and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a non-cited violation.

Item E—Failure to utilize the proper radiation postings (Section 16). The ATEC audit identified a number of potential NRC-related posting deficiencies. Based upon that audit finding the license took an aggressive approach to post areas where required. NRC verified that the posting deficiencies were corrected. The finding was considered to be of minor health and safety significance, was corrected in a reasonable time, was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or licensee finding within the past two years of the inspection at issue, or the period within the last two inspections; and was not a willful violation. Accordingly, the NRC exercised discretion, and the finding was considered to be a noncited violation.

Remaining Audit Findings

The remaining audit findings were related to Battelle's research and

development safety program. These findings involved questionable laboratory practices and portions of the radiation safety program where OSHA, not NRC, requirements applied. The NRC referred the findings concerning questionable laboratory practices and relevant radiation safety issues to OSHA for resolution. The ATEC auditor, in some cases, also did not have additional relevant information that would have mitigated some audit findings. BMI identified corrective actions for the audit findings by conducting reviews of the laboratory facilities; interviews with BMI employees; and a review of records and documents that were associated with the general health and safety of BMI employees and the public.

A copy of NRC Inspection Report 070-00008/94001(DRSS) dated April 26, 1994, was provided to the Petitioner on June 7, 1994. There will be no further action regarding this matter, since the NRC considers the concerns resolved. Future NRC inspections will be directed to specific program areas, consistent with the restructured license, to focus inspections by the type of nuclear material and activity involved, i.e., special nuclear material, byproduct material, and broad scope license activities such as radiography and tracer studies. NRC will continue to support efforts by licensees, including BMI, to implement effective self assessments and implement timely corrective actions when deficiencies and weaknesses are identified.

The Petitioner's concern regarding NRC oversight was substantiated. As described above, action has been taken to enhance NRC oversight of BMI's licensed program.

IV. Conclusion

The Staff has carefully considered the request of the Petitioner. In addition, the Staff has evaluated the bases for the Petitioner's request. For the reasons discussed above, I conclude that the Petitioner has raised valid issues related to BMI's compliance with NRC requirements and the NRC's licensing and oversight of the BMI facility. Accordingly, the Petitioner's request for an investigation and enforcement action pursuant to 10 CFR § 2.206 is granted as described in this Decision, and appropriate enforcement and other actions for the ATEC audit related deficiencies have been taken as described above. In addition, as described above, appropriate action has been taken by the NRC staff to address the NRC's oversight of BMI's licensed activities.

As provided by 10 CFR § 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 14th day of December 1994.

For the Nuclear Regulatory Commission.

Robert M. Benero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-31569 Filed 12-22-94; 8:45 am]

BILLING CODE 7590-01-M

Overall Review Strategy for the Nuclear Regulatory Commission's High-Level Waste Repository Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG-1495, "Overall Review Strategy for the Nuclear Regulatory Commission's High-Level Waste Repository Program."

ADDRESSES: Copies of NUREG-1495 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG-1495 is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), N.W., Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT: Robert L. Johnson, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11545 Rockville Pike, MD 20852. Telephone: (301) 415-7282.

SUPPLEMENTARY INFORMATION: The Overall Review Strategy gives general guidance to the Nuclear Regulatory Commission staff for conducting its license application and pre-license application reviews. These reviews are in support of the Commission's construction authorization decision for a geologic repository for the disposal of high-level radioactive waste. Objectives and strategies are defined that focus the staff's reviews on determining compliance with requirements of 10 CFR Part 60. These strategies define how the staff prioritizes its reviews on those key technical uncertainties considered to be most important to repository performance. Strategies also give guidance for developing, in an integrated way, the License Application Review Plan together with supporting performance assessments, analyses, and research.

Dated at Rockville, Maryland, this 15th day of December 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-31567 Filed 12-22-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clearance Office: Richard T. Redfearn, Acting Director, (202) 942-8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Adoption

Rule 17Ad-16
File No. 270-363

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget approval for the adoption of Rule 17Ad-16 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*).

Rule 17Ad-16 requires registered transfer agents to provide written notice to a qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. The staff estimates that approximately 450 transfer agents will incur an average burden of one-half hour to comply with the rule, for a total annual burden of 225 hours.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Richard T. Redfearn, Acting Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549 and to the Clearance Officer for the Securities and Exchange Commission.

Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 13, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31528 Filed 12–22–94; 8:45 am]

BILLING CODE 6010–01–M

[Release No. 34–35104; File No. SR–Amex–94–14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Amendment of the Exchange's Rules for the Emerging Company Marketplace

December 15, 1994.

I. Introduction

On May 9, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its listing requirements for the Emerging Company Marketplace and to add criteria for the listing of preferred stock, warrants, debt, and units. On August 25, 1994, the Amex submitted Amendment No. 1 to the proposed rule change, and on November 14, 1994, the Exchange submitted Amendment No. 2 to the proposed rule change.[3]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 34615 (August 30, 1994), 59 FR 46455 (September 8, 1994) ("Notice of Proposed Rule Change"). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Background

In March 1992, the Commission approved a rule change to amend the Amex Company Guide to add a new section establishing listing criteria for an Emerging Company Marketplace ("ECM").[4] The ECM rules established quantitative listing standards that were below those required for listing on the Amex's main list. In addition, the ECM rules created a multi-step Amex approval process whereby candidates for listing needed the approval of the Exchange staff and the separate concurrence of the ECM Listing Committee ("Committee"). In evaluating listing eligibility, the staff and the Committee were required to consider quantitative as well as qualitative criteria.

In May 1994, the United States General Accounting Office ("GAO") issued a report ("GAO Report") that examined the Amex's methodology for deciding whether to approve a company's securities for ECM listing and trading.[5] The GAO Report recommended that the Amex improve the ECM listing process by: (1) Publishing a more comprehensive statement of the ECM qualitative listing factors, including the significance of each factor to the final listing decision; (2) modifying the ECM rules to define the quantitative requirements warrants must meet for listing; (3) establishing an ECM rule for the listing and trading of units; and (4) ensuring that the Exchange fully documents that all quantitative requirements are met before a company is traded on the ECM. The Commission concurred with the GAO's recommendations and noted that they were consistent with the Division of Market Regulation's ("Division's") conclusions following its prior inspection of the ECM.[6]

III. Description

A. Numerical Listing and Maintenance Criteria

Amex rules currently provide quantitative listing and maintenance standards for common stock trading on the ECM.[7] The rule change makes several clarifying changes to the existing standards[8] and adds guidelines for the listing of warrants, preferred stock, debt, and units, and maintenance criteria for the continued listing of these securities. Each of the numerical initial listing guidelines must be met before trading may commence, although, in the case of an initial public offering ("IPO"), certain of these criteria may be met upon the commencement of trading on the ECM.[9]

The rule change provides that, to list preferred stock on the ECM, companies must satisfy the total assets, stockholders' equity, and minimum price criteria set forth in the listing standards for common stock, and must have at least 100,000 preferred shares publicly held with an aggregate market value of at least $2,000,000.[10] The listing of warrants is subject to all of the numerical criteria for listing common stock, except for the price and market value requirements. Debt securities must have a principal amount or aggregate market value of at least $5 million, and must meet the assets and stockholders' equity criteria for common stock. The rule change further provides that the Exchange may list units comprised of one or more securities, provided that each of the component parts of the unit would separately satisfy the applicable ECM listing requirements.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* letter from Claudia Crowley, Special Counsel, Amex, to Katherine Simmons, SEC, dated November 10, 1994. Amendment No. 2 adds maintenance standards for the continued listing of preferred stock, debt, warrants, and units.

[4] *See* Securities Exchange Act Release No. 30445 (March 5, 1994), 57 FR 8693 (March 11, 1992) (approving File No. SR–Amex–91–25) ("ECM Approval Order").

[5] GAO, *American Stock Exchange—More Changes Needed in Screening Emerging Companies for the Marketplace* (May 1994).

[6] *See* letter from Brandon Becker, Director, Division, to Richard L. Fogel, Assistant Comptroller General, GAO, dated February 18, 1994, *reprinted in* GAO Report, *supra* note 5.

[7] The following is the criteria for listing common stock on the ECM:

	Companies traded in Nasdaq*	Companies not traded in Nasdaq**
Total Assets	$2 million	$4 million.
Stockholders' Equity	$1 million	$2 million.
Aggregate Market Value.	$2.5 million	$2.5 million.
Public Float	250,000 shares.	250,000 shares.
Public Shareholders	300	300.
Minimum Price	$1	$3.

*The alternate listing criteria for companies traded in Nasdaq require $2 million in stockholder's equity if the minimum share price is below $1

**The alternate listing criteria for companies not traded in NASDAQ require $3 million in total assets, 400,000 shares, and a minimum share price of $2 if the aggregate market value of the issue is above $10 million.

[8] The rule change replaces the term "Capital & Surplus" in the listing standards for common stock with the term "Stockholders' Equity." In addition, the rule change clarifies that the public float and public shareholders requirements include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.*, 5% or greater), affiliated, or family holdings.

[9] For example, to ascertain compliance with the public float and public holder calculations in the case of an IPO, the Exchange requires that the underwriter for the offering submit a letter to the Exchange assuring that the distribution of the company's securities in the offering will satisfy or exceed the distribution requirements of the Exchange. In the case of a lesser known underwriter, the Exchange may consider the prior performance of the underwriter and the number of offices, brokers, and accounts of the underwriter. *See* letter from Lois A. Schmidt, Senior Vice President, Amex, to Katherine Simmons, Division, SEC, dated July 18, 1994, at 4 ("Listing Letter").

[10] The new listing standards for preferred stock state that the Exchange strongly recommends each preferred issue listed on the ECM be structured so as to comply with the shareholder voting requirements of Section 124 of the Amex Company Guide.

The Exchange will not consider listing warrants, convertible preferred stock, or convertible debt unless the underlying common stock meets the criteria for listing common stock on the ECM. The Exchange also will not list warrants or convertible securities unless current last sale information is available with respect to the underlying security.

The rule change provides maintenance criteria for preferred stock, warrants, debt, and units listed on the ECM.[11] In addition to satisfying the total assets, equity, market value, and price criteria for common stock,[12] preferred stock will be subject to delisting if it does not have at least 50,000 shares publicly held. The continued listing of warrants is subject to all of the numerical maintenance criteria for common stock, except for the price and market value requirements. Bonds and debentures must meet the total assets and stockholders' equity criteria for common stock, and must maintain a principal amount or aggregate market value of at least $400,000.[13] The rule change further provides that the continued listing of units comprised of one or more securities is dependent upon compliance by each component part of the unit with the applicable maintenance criteria.

[11] The ECM Rules provide that companies with a deficiency in market value or price for 10 consecutive trading days shall have 90 days thereafter in which to comply with the continued listing requirements or become subject to delisting. The ECM rules further provide that the Amex must immediately commence delisting procedures in accordance with Section 1010 of the Amex Company Guide when a company experiences a deficiency in any other maintenance criteria. The procedures contained in Section 1010 require the Amex to notify the company in writing of the facts and circumstances which have caused the Amex to consider delisting the company's security. The notification must include the time and place when a conference will be held by the Exchange's Securities Division to hear any reasons why the company believes its securities should not be removed from listing. If the Securities Division determines that the security should be delisted, Section 1010 provides procedures for the company to appeal the decision.

[12] The following is the criteria for the continued listing of all common stock on the ECM:

	Regular	Alternate
Total Assets	$2 million	$2 million.
Stockholders' Equity	$1 million	$2 million.
Aggregate Market Value	$500,000	$1 million.
Public Float	250,000 shares.	250,000 shares.
Public Shareholders	300	300.
Minimum Price	$1	Below $1.

[13] Warrants exercisable into common stock and debt issues convertible into common stock are subject to delisting if the common stock is not in compliance with the maintenance standards for common stock.

B. Qualitative Listing Criteria

In addition to requiring that all ECM companies meet the quantitative criteria described above, the ECM rules currently provide that the Exchange and the ECM Listing Committee will consider subjective or qualitative factors when evaluating whether a security should be admitted to the ECM list. These factors include: The nature of the company's business, its commercial prospects and future outlook, the reputation of its management,[14] its historical record and pattern of growth, and its financial integrity. The rule change specifies that these subjective criteria will be applied on an individual, case-by-case basis, and that different criteria may have more or less significance depending upon the business characteristics of the applicant. The rule change states that, as a general matter, the relative maturity of a company also will influence the factors considered in its evaluation.[15] Which factors are of greatest significance will likely be a function of the nature of the company's business, the company's maturity, and the relative level of commercial acceptance of its products or services.[16] The Exchange states that it would consider whether the company is providing a service, developing a new product or technology, or exploiting existing ones, and the company's plans to raise capital and expand through future contracts or otherwise. The Exchange believes that the absence of a strong historical record or pattern of growth should not, in and of itself, preclude listing on the ECM if the company satisfies the quantitative requirements and has the potential to demonstrate future success. The Exchange would give added consideration to a company's historical record in evaluating its suitability for listing if it were a more mature company.

C. The Approval Process

To be listed on the ECM, a company must be approved by the Exchange staff and the Committee. Initially, a listing application is evaluated by the Exchange staff. Although all companies must meet each of the numerical guidelines before trading commences, the rule change specifies that the staff may present a company to the Committee for its approval before the company has satisfied each of the numerical guidelines.[17] The Committee then evaluates each application based upon the quantitative and qualitative factors described above. The rule change states that, while the Committee will not ordinarily attach conditions to an approval, in the event that it does do so, the company may not commence trading until such conditions are met, or the company is reconsidered and approved by the Committee.

Once a listing application is approved by the Committee, the Exchange staff is responsible for ensuring that all of the numerical criteria and any conditions of the Committee's approval are met before trading of the security commences.[18] The rule change specifies that if a company approved by the Committee has not commenced trading within two quarters [19] of its approval by the Listing Committee, the Exchange must resubmit the application to the Listing Committee for further review. In addition, the rule change states that if, prior to the commencement of trading, a company that was approved by the Committee experiences a negative change that affects its business, the Exchange staff must consult with the Chairman of the Committee. The Chairman of the Committee must then determine whether the change warrants the reconsideration of the full Committee.[20]

[14] The Exchange represents that it routinely screens all officers, directors, principal shareholders, underwriters, consultants and other significant individuals associated with each company it considers for listing through a variety of regulatory and commercial databases. *See* Notice of Proposed Rule Change at n.1.

[15] The rule change provides, for example, that with a developmental stage company, the Exchange will likely give greater weight to the company's future prospects than to its historical performance.

[16] For example, the Exchange states that, due to the high cost of business or product development, young companies are often without positive cash flow or earnings, so that the prospects and future outlook of such companies must lie at the heart of their qualitative analysis.

[17] For example, the Exchange states that it is not unusual for a company to satisfy virtually all of the numerical guidelines but have a shortfall in stockholders' equity which the company plans to remedy through an imminent private placement. Such an issuer might consider whether or how to secure financing based upon knowledge that it would be eligible to list on the ECM once the offering is completed. The Exchange believes that in such a case, there is no reason to defer presenting the company for the Committee's consideration until after the completion of the financing transaction.

[18] The rule change states that, while no company may be approved for listing unless it has been approved by the Committee, the final determination on whether to approve any company for listing will, in each case, be made at the discretion of the Exchange staff.

[19] The Amex will interpret the two quarter parameter to require resubmission of any company that has not commenced trading within *6 months* of the Committee's approval. Conversation between Jim Duffy, General Counsel, Amex, and Holly Smith, Associate Director, SEC, on November 30, 1994.

[20] The Commission expects the Amex staff to consider with all due care any change in the business prospects of a candidate issuer, and give prompt notification to the Chairman of the

D. Miscellaneous

Finally, the rule change adds various other provisions that the Exchange states reflect certain matters that were previously covered only in other Exchange rules or in the ECM Listing Agreement.[21] The rule change also specifies that ECM companies are not eligible to take advantage of the state securities ("blue sky") exemptions that are available to non-ECM, Amex-listed companies, and that ECM-listed securities are not automatically marginable. The rule change also allows ECM companies to move to the Amex's primary list if they satisfy the original listing criteria for that list, but prohibits companies on the primary list from transferring to the ECM.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b).[22] For the reasons stated below, the Commission believes the proposal is consistent with Section 6(b)(5), which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the rule change makes necessary amendments to the ECM listing process and substantially addresses problems previously identified with the existing structure. Specifically, as requested by the GAO, the Amex is adding to its ECM rules listing and maintenance standards for preferred stock, debt, warrants, and units. The Exchange also represents, in a letter sent to the Division in connection with the rule change, that certain changes already have been made to the Exchange's approval process to ensure the existence of adequate documentation reflecting the listing decision.[23] In addition, the rule proposal includes a description of the qualitative factors considered by the Exchange staff and the Committee when reviewing a company's listing application.[24]

A. Listing and Maintenance Criteria

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is important to financial markets and the investing public. Listing standards enable a self-regulatory organization to screen issuers and to provide listed status only to *bona fide* companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity.

The Commission believes that the new quantitative listing and maintenance criteria for ECM issuers are consistent with Section 6(b)(5) of the Act because they should aid the Exchange in ensuring the maintenance of fair and orderly markets on the ECM, as well as provide benefits and protections to investors who trade in ECM securities. The Commission recognizes that the listing and maintenance standards for ECM issuers are lower than those for regular Amex-listed issuers and that the markets for ECM securities may not be as liquid and deep as those for securities on the Amex's main list. Nevertheless, the Commission believes that the ECM listing and maintenance criteria are adequate to ensure that fair and orderly markets can be maintained.[25] This conclusion is reinforced by the mandatory nature of the quantitative listing criteria. The Commission believes that mandatory standards should help to safeguard the integrity of the exchange market by ensuring that the numerical listing criteria are true minimum standards and not subject to arbitrary waiver. In addition, the Commission believes that the maintenance standards help the Amex to determine whether an issuer should continue to trade on the ECM.[26]

The Commission further believes that inclusion of a security for listing on the ECM should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing.[27] The Commission believes that, by including certain qualitative factors for consideration in the approval process, the ECM rules provide the Exchange with the necessary flexibility to determine whether to list an issuer, while ensuring that certain minimum quantitative standards must be met. The Commission believes that the rule change, including provisions in the rule filing that describe the significance of the qualitative factors,[28] will provide guidance to the Exchange staff, the Committee, and companies applying for listing on the ECM as to the scope and relative importance of each qualitative factor.

B. Approval Process

As described in detail above, listing on the ECM requires the approval of both the Exchange's staff and the Committee. As originally approved by the Commission in 1992,[29] the Exchange's staff would review applications, and if the company met the quantitative listing criteria, the staff would send the application to the Committee. The Committee would then use its expertise to apply the subjective criteria and ensure the *bona fides* of ECM applicants.

Although not expressly contained in the ECM rules, the Exchange interpreted the rules to permit Exchange staff to submit a company's application to the Committee for review before all of the quantitative initial listing criteria were

Committee of any information that comes to the staff's attention that may have an adverse impact on the business of the candidate issuer.

[21] Section 132 of the Amex Company Guide provides that companies applying for listing must enter into written agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies.

[22] 15 U.S.C. 78f(b) (1988).

[23] *See* Listing Letter, *supra* note 9.

[24] *See* Notice of Proposed Rule Change.

[25] Although the Commission believes the numerical listing requirements are adequate, it is concerned with the Exchange's policy that allows companies to be approved for listing despite the existence of outstanding "going concern" opinions from their independent auditors. The Exchange states that, while a going concern opinion will not automatically preclude a listing, the staff and the Committee will consider carefully why such an opinion was given and how likely it is that the qualifier will be lifted in the near term. *See* Notice of Proposed Rule Change at n.3. The Commission believes that the listing of a company with an outstanding going concern opinion raises serious concerns, particularly with respect to developmental companies, and expects that the Amex would not normally approve such companies for listing on the ECM. In the event that the Amex determines that a company with an outstanding going concern opinion is subject to special circumstances that warrant approval for listing, the Commission would expect the Exchange staff as well as the Committee to document specifically its reasons for listing such a company.

[26] The Commission believes enforcement of an exchange's maintenance standards is vital to the continued integrity of an exchange's market. The Commission expects that the Amex will strictly enforce the maintenance criteria contained in the ECM Rules and will delist companies that fail to meet these standards. In this regard, the Commission notes that the ECM Rules state that continued listing is "dependent upon" compliance with the numerical maintenance criteria. *See* ECM Supplement, Amex Company Guide.

[27] *See, e.g., In the Matter of Silver Shield Mining and Milling Company,* Securities Exchange Act Release No. 6214 (March 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); *In the Matter of Consolidated Virginia Mining Co.,* Securities Exchange Act Release No. 6192 (February 26, 1960).

[28] *See* Notice of Proposed Rule Change, at 46455–56.

[29] *See* ECM Approval Order, *supra* note 4.

met, so long as the staff ensured compliance with the criteria before trading began. The Exchange also interpreted the ECM rules to permit the Committee to grant issuers conditional approval of their listing applications. The rule change codifies these interpretations into the text of the ECM rules.

The Commission believes, as discussed above, that enforcement of mandatory minimum listing standards is necessary to safeguard the integrity of the exchange market. The Commission is satisfied that the approval procedures outlined above are adequate to ensure that both the qualitative analysis and the quantitative requirements of the ECM rules are complied with by issuers before or upon commencement of trading on the ECM. No issuer may be listed on the ECM until all conditions imposed by the Committee, if any, have been met. Additionally, in cases where two quarters[30] have passed since the issuer was approved by the Committee, the Exchange staff must resubmit the issuer to the Listing Committee for another review and approval. Similarly, where negative information concerning the issuer has been disseminated after the Commission's approval, the Exchange staff must seek a determination for the Committee Chairman regarding whether, in his or her opinion, the issuer must be resubmitted to the full Committee.

The Commission believes that the requirements that a company must be resubmitted to the Committee if it has not commenced trading within two quarters of the Committee's approval or if there is a negative change that affects its business before trading commences, are necessary to maintain the integrity of the two-step approval process. While the Exchange staff may determine that all of the minimum numerical listing criteria are met, one of the purposes of requiring the Committee's approval is to allow it to use its expertise in evaluating the qualitative factors. Requiring the approval of the Committee would be meaningless if such approval were given based upon information that was inaccurate or incomplete, or was no longer relevant by the time the company's securities started to trade on the ECM.

C. Miscellaneous Provisions

The Commission notes that when the ECM rules were initially approved, the Amex had in place procedures to ensure that ECM issuers would not use the exemption from registration requirements that the securities laws of most states make available to companies on the Amex's main list. The Amex included in its original proposal various safeguards designed to ensure that ECM issuers remained fully subject to state review. For example, the ECM Listing Agreement and the letter issued by the Exchange approving the listing of securities of the ECM clearly stated that ECM issuers would not be able to take advantage of existing exemptions in state securities registration requirements accorded to regular Amex-listed securities. In addition, the text of the Company Guide requires the Exchange to delist the issues of any company that fails to take appropriate steps to ensure that no ECM-listed securities are sold on its behalf in reliance upon the exemption from state securities registration which is otherwise available to companies listed on the Exchange. While the Commission believes these steps helped to put issuers on notice of the "blue sky" status of ECM securities, the present rule change adds additional restrictive language in the text of the ECM rules that should further serve to ensure ECM issuers do not avail themselves of the "Amex exemption" from state blue sky laws.[31]

Finally, the Commission believes that inclusion in the rule change of a 100% maintenance margin requirement for ECM-listed securities will help ensure that ECM issuers are on notice of their margin treatment. Amex Rule 462 (Minimum Margins) currently requires maintenance of a 100% margin for ECM securities, unless the Exchange determines that an ECM company meets the criteria under Regulation T of the Federal Reserve Board ("FRB") for initial inclusion on the FRB's List of OTC Margin Stocks.[32]

The Commission finds good cause for approving Amendment No. 2 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 2 adds maintenance standards for the continued listing of preferred stock, debt, warrants, and units.[33] The Amex's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[34]

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–14 and should be submitted by January 13, 1995.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–Amex–94–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–35109; File Nos. SR–Amex 94–34, NYSE–94–35]

Self-Regulatory Organizations; American Stock Exchange, Inc. and New York Stock Exchange, Inc.; Order Granting Approval to Rule Changes Relating to Limited Partnership Rollup Transactions

December 16, 1994.

I. Introduction

On September 6 and October 6, 1994, the American Stock Exchange, Inc. ("Amex") and the New York Stock Exchange, Inc. ("NYSE"), respectively,

[30] *See supra* note 19.

[31] As the Commission noted in the original approval of the ECM, if an ECM issuer relies on the Amex's exemptions under state blue sky laws and the Amex does not promptly act to delist the issuer, concerns would be raised regarding whether the Amex abdicated its regulatory responsibility as a national securities exchange with regard to the enforcement of its rules concerning the securities approved for listing and trading on the exchange, in violation of Sections 19(g)(1) and 19(b)(4) of the Act. *See* ECM Approval Order, *supra* note 4, at n.61.

[32] ECM companies that the Amex finds meet the criteria for initial inclusion on the FRB's List of OTC Margin Stocks are subject to Amex's regular maintenance margin of 25%. *See* Amex Rule 462(b)(5).

[33] *See supra* note 3.

[34] *See* Notice of Proposed Rule Change.

[35] 15 U.S.C. 78s(b)(2) (1988).

[36] 17 CFR 200.30–3(a)(12) (1993).

(the Amex and the NYSE collectively referred to as "Exchanges") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to prohibit listing of entities resulting from limited partnership rollup transactions,[3] except under specified conditions, and to impose certain corporate governance standards on limited partnerships. The proposed rule changes were published for comment in Securities Exchange Act Release No. 43890 (October 25, 1994), 59 FR 54647 (November 1, 1994) and Securities Exchange Act Release No. 43889 (October 25, 1994), 59 FR 54650 (November 1, 1994), respectively.

On November 2 and December 14, 1994, the Amex filed Amendments Nos. 1 and 2, respectively.[4] Amendment No. 2 replaced Amendment No. 1 in its entirety. On November 21, 1994 the NYSE filed Amendment No. 1.[5] Each of these amendments made non-substantive, clarifying changes to the proposals that are incorporated into the discussion below.

No comments were received on either proposal. This order approves the proposed rule change, including all the amendments.

II. Overview of Proposals

In December 1993, Congress adopted the Limited Partnership Rollup Reform Act of 1993 ("Rollup Reform Act") to regulate limited partnership rollups. The Rollup Reform Act added subparagraph (9) to Section 6(b) of the Act[6] to require that the rules of an exchange must prohibit the listing of any security issued in a limited partnership rollup transaction, "unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including" the procedures specified at Section 6(b)(9) of the Act.

The Exchanges have filed the rule changes[7] to ensure their compliance with the provisions of the Rollup Reform Act. Specifically, these changes provide that securities issued in connection with a limited partnership rollup transaction cannot be listed on either Exchange unless:

A. such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including such procedures as are set forth specifically at Section 6(b)(9) of the Act;

B. a broker-dealer that is a member of the National Association of Securities Dealers, Inc. ("NASD") participated in the rollup transaction; and

C. the issuer has provided the applicable Exchange with an opinion of counsel confirming that the transaction was, in fact, conducted in accordance with NASD procedures.

These last two requirements will enable the Exchanges to rely upon the NASD's regulatory scheme, which recently was approved by the Commission,[8] to govern the listing to rollups. In order to be listed, such a security also will have to satisfy the applicable Exchange's corporate governance and listing standards requirements, as appropriate, including a requirement that any limited partnership have at least one corporate general partner, or co-general partner, who satisfies the Exchange's independent director and audit committee requirements.

III. Comments

Although no written comments were received with respect to the rule changes, the Commission did receive seven comment letters in response to its release noticing the NASD's proposed regulatory scheme regarding limited partnership rollup transactions.[9] The Commission considered these comments in its order approving the NASD's proposal,[10] which proposal is the basis of the Exchanges' proposals.

IV. Discussion

The Commission finds that the Exchanges' proposals to adopt listing standards for securities issued in limited partnership rollup transactions are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed listing standards are consistent with Section 6 of the Act, including the requirements of Section 6(b)(5),[11] which provides that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

As stated above, Congress adopted the Rollup Reform Act to regulate limited partnership rollups. This act reflects a belief that partnership rollup transactions, when properly structured, may offer significant benefits to investors and for businesses that have used these structures to raise capital. Congress has determined, however, that abusive limited partnership rollup transactions harm investors, undermine investor confidence and threaten capital formation.[12] To curtail these abuses, Congress amended Section 6 of the Act to provide that the rules of an exchange must prohibit the listing of a rollup security "unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including" such procedures as are set forth at subparagraph (9) of Section 6(b) of the Act.

In accordance with the Rollup Reform Act, the Exchangees' rule proposals will adopt new listing standards that will condition the listing of securities issued in a rollup transaction upon satisfaction of the criteria set forth in Section 6(b)(9) of the Act. The new standards also will provide that a broker-dealer that is a member of the NASD must participate in the rollup transaction in which such securities were issued, and that the issuer of such securities must provide the applicable Exchange with an opinion of counsel confirming that the transaction was in fact conducted in accordance with NASD procedures. This will enable the Exchanges to rely upon the regulatory scheme adopted by the NASD (and recently approved by the Commission) to govern the listing of rollups.[13]

The Commission believes that the rule changes will provide important benefits to investors who may be subject to limited partnership rollup transactions by ensuring that their rights are protected in accordance with the intent of Congress as embodied in the Rollup Reform Act. The rule changes will permit rollups to take place but will protect against the abusive practices that have occurred in the past. In particular, these changes will ensure that limited

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The term "limited partnership rollup transaction" is defined at Section 14(h) of the Act. 15 U.S.C. § 78n(h) (1988 & Supp. 1993).

[4] *See* letters from Linda Tarr, Senior Counsel, Amex, to Elisa Metzger, Senior Counsel, SEC, dated November 2 and December 14, 1994.

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated November 21, 1994.

[6] 15 U.S.C. 78f(b)(9) (1988 & Supp. 1993).

[7] The rule change filed by the Amex adds a new Section 126 to the Amex Company Guide. The NYSE's rule change adds a new Paragraph 105 to the NYSE's Listed Company Manual and renumbers existing Paragraphs 105.00, 105.01, 105.02, and 105.03 as Paragraphs 106.00, 106.01, 106.02, and 106.03, respectively.

[8] *See* Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994).

[9] *See* Securities Exchange Act Release No. 32312 (May 17, 1993), 58 FR 29655 (May 21, 1993).

[10] *See* note 8, *supra*.

[11] 15 U.S.C. § 78f(b)(5) (1988).

[12] *See* S. Rep. No. 121, 103d Cong., 1st Sess. (1993).

[13] *See* Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994).

partners are not forced into a rollup but instead have the right to compensation, based on appraisal. These rules also will prevent the unfair conversion and valuation of the general partner's interests in a rollup transaction; prevent investors; voting rights from being unfairly reduced or abridged; prevent the limited partners from having to bear an unfair portion of the costs of a transaction that has been rejected; and prevent the payment of fees to general partners in connection with a rollup that are unfair, unreasonable, or inappropriate.[14]

It is therefore ordered, pursuant to Section 19(b)(2),[15] that the proposed rule changes are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35106; File No. SR-Amex-94-35]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 to Proposed Rule Change Relating to Automatic Cancellation of Open Orders in Expiring Equity Securities.

December 16, 1994.

On September 6, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Amex Rule 179 to provide for automatic cancellation of open orders[3] in expiring equity securities. On November 10, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to define certain terms used in the original filing.[4] On December 14, 1994, the Exchange submitted Amendment No. 2 to the proposed rule change to make certain technical corrections to the scope of its proposal.[5]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34763 (September 30, 1994), 59 FR 50937 (October 6, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendments No. 1 and No. 2 on an accelerated basis.

Exchange Rule 179 is designed to facilitate the timely completion of transactions in expiring securities. Currently, Rule 179 applies only to rights and warrants. The rule requires that, for certain periods of time before the expiration of an issue of rights or warrants, members and member organizations that place orders in those securities must specify "next day" or "cash" settlement, rather than "regular way" five-day delivery.[6] Specifically, orders in expiring rights must be for "next day" delivery during the five business days preceding the final day for trading the issue, and for "cash" settlement on the final trading day before expiration.[7] Orders in expiring warrants must be for "next day" delivery during the three business days preceding the final five business days for trading the issue, and for "cash" settlement during the final five business days before expiration.[8]

Rule 179 further provides for automatic cancellation of open "regular way" and "next day" orders in expiring rights and warrants, entered in the Exchange's automated Post Execution Reporting ("PER") system and on the specialist's book, prior to commencing "next day" and "cash" trading in those securities.[9] Members and member organizations are informed of cancellations in advance, via notices on the ticker tape and in the Amex's Weekly Bulletin,[10] and have an opportunity to replace cancelled orders. The substituted order is treated as a new order and does not retain the priority on the specialist's book of the cancelled "regular way" or "next day" order. The Exchange believes that the amendments to Rule 179 have resulted in a significant reduction of errors in the clearance and settlement of expiring rights and warrants.

The Exchange proposes to expand Rule 179's automatic cancellation provisions to include all expiring equity securities. For purposes of this rule, the term "expiring equity security" will be defined as any security that is traded on the Exchange as an equity security and has a specific maturity, expiration or termination date.[11] According to the Amex, that definition will include currency and index warrants, redeemable preferred stock, Contingent Value Rights, Stock Index Return Securities, Equity Linked Securities, Yield Enhanced Equity Linked Debt Securities and other similar products; but will not include securities that are being delisted from the Exchange.[12]

Under the Amex proposal, orders in an expiring equity security, other than an issue of rights or warrants described in Rule 179(a) and (b),[13] must be for "next day" delivery during the five business days preceding the final day for trading that security, and for "cash"

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[14] The rules being approved hereby do not directly mandate that such rights be protected. Rather, these rules protect such rights indirectly by requiring that all securities issued in a limited partnership rollup transaction and listed on either Exchange be issued in a transaction conducted in accordance with NASD procedures that do mandate such rights.

[15] 15 U.S.C. §78s(b)(2) (1988).

[16] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] An open or Good 'Til Cancelled ("GTC") order is an order that remains in effect until it is either executed or cancelled. *See* Amex Rule 131(j).

[4] *See* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated November 10, 1994 ("Amendment No. 1").

[5] *See* letter from Linda Tarr, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated December 14, 1994 ("Amendment No. 2").

[6] "Next day" settlement requires delivery on the business day following the trade date; "cash" settlement requires delivery on the trade date. *See* Amex Rule 124.

[7] *See* Rule 179(a).

[8] *See* Rule 179(b).

[9] The automatic cancellation provisions were adopted in Securities Exchange Act Release No. 32320 (May 17, 1993), 58 FR 30078 (May 25, 1993) (File No. SR-Amex-92-31) ("1993 approval order"). Prior to approval of that proposal, open orders in expiring rights and warrants remained in PER and on the specialist's book, unless the orders were cancelled by the member or member organization that had placed them. Accordingly, the Amex specialist treated open "regular way" orders as "next day" orders and open "next day" orders as "cash" orders, where required by Rule 179's time frames. *See supra*, 1993 approval order.

[10] Ticker notices appear on a weekly basis beginning two to four weeks before the start of "non-regular way" trading. The notice then runs on the last day of "regular way" trading and on every day of "next day" or "cash" trading. All ticker notices are published verbatim in the Amex's Weekly Bulletin. Telephone conversation between Linda Tarr, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on December 5, 1994.

[11] *See* Amendments No. 1 and No. 2, *supra*, notes 4-5. According to the Amex, this definition will exclude securities that are traded as debt securities or options. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler Attorney, Division of Market Regulation, SEC, on December 9, 1994.

[12] *See* Amendment No. 1, *supra*, note 4.

[13] The Amex has indicated that Rules 179(a) and (b) generally describe securities that entitle the holder to buy or sell shares of the issuer's common stock and that, upon exercise, result in a change in ownership (rather than a monetary payment). Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on December 15, 1994.

settlement on the final trading day before expiration. Where appropriate, however, the Exchange may establish different time frames for particular types of expiring equity securities.

At the specified times, open "regular way" and "next day" orders in *any* expiring equity security (including rights and warrants), entered in PER and on the specialist's book will be automatically cancelled. The Exchange will continue to use its existing procedures (*i.e.*, ticker notices and the Weekly Bulletin) to notify members and member organizations of impending cancellations.[14] As is currently the case for rights and warrants, substituted "next day" and "cash" orders in other types of expiring equity securities will be treated as new orders. The Amex believes that the extension of Rule 179's provisions to all expiring equity securities should provide comparable benefits (*i.e.*, a reduction of clearance and settlement errors).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[15] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designated to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

For the same reasons discussed in the Commission's order approving automatic cancellation of open orders in rights and warrants,[16] the Commission believes that the proposed rule change will facilitate the timely clearance and settlement of trades in other types of expiring equity securities and should create a more efficient market for such products. As noted therein, orders entered into PER and placed on the specialist's book are routinely assigned the Amex's omnibus give-up ("APEX");[17] this symbol locks in "regular way" clearance through National Securities Clearing Corporation ("NSCC") facilities. Orders for "next day" or "cash" settlement, however, require the member or member organization's specific give-up symbol, instead of "APEX," to obtain "non-regular way" clearance through NSCC. To the extent that open orders with the "APEX" give-up remain in PER and on the book after the start of "non-regular way" trading, the specialist must change that symbol manually. If he or she fails to do so, executed trades would go through the normal clearance cycle and would not settle in a timely fashion.

After careful review, the Commission has concluded that the Amex proposal will help ensure that, as a matter or course, open orders in all expiring equity securities have the give-up symbol needed to complete transactions prior to the issue's expiration. Under Rule 179, as amended, open "regular way" orders will be electronically purged from Amex systems once "non-regular way" trading begins. The specialist will no longer be responsible for correcting errors manually. Instead, if "next day" or "cash" settlement is acceptable, the member or member organization that placed the order will have the opportunity to substitute a new order with appropriate delivery terms.[18] In the Commission's opinion, the proposed rule change should make the market for expiring equity securities function more smoothly.

Finally, the Commission believes that Exchange members and member organizations will receive adequate notice of impending cancellations of open orders in expiring equity securities. As the expiration date of a given issue approaches, the Amex will place messages on the ticker-tape and in its Weekly Bulletin.[19] These notices will appear weekly during "regular way" trading and on a daily basis once "non-regular way" trading begins.[20] Based on the Amex's experience with rights and warrants,[21] the Commission continues to believe that these procedures are sufficient to alert members and member organizations that open orders in expiring equity securities will be cancelled, and to provide them with a reasonable opportunity to respond.

The Commission finds good cause for approving Amendments No. 1 and No. 2 prior to the thirtieth day after the date of publication of the notice of filing thereof. Amendment No. 1 merely defines certain terms used in the original filing, and Amendment No. 2 makes certain technical corrections to the scope of the proposal. Finally, the Commission did not receive any comments on the proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendments No. 1 and No. 2 between the Commission and any persons, 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. 20549. Copies of such filing will also be available at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-35 and should be submitted by January 13, 1995.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR-Amex-94-35), including Amendments No. 1 and No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-31529 Filed 12-22-94; 8:45 am]

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[14] *See supra*, note 10 and accompanying text. In this regard, the Amex has committed to distribute an Information Circular advising members and member organizations that the Commission has approved this proposal and describing how notification of cancellations will be provided. *See* letter from Linda Tarr, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated September 28, 1994.

[15] 15 U.S.C. § 78f(b) (1988).

[16] *See* 1993 approval order, *supra*, note 9.

[17] "APEX" identifies the Exchange as the contra party to the transaction.

[18] As the Commission noted in regard to rights and warrants, *see* 1993 approved order *supra* note 9, the member or member organization that placed the order did not agree to and, in fact, may not be able to satisfy new delivery terms. Accordingly, the Commission concluded that it was more equitable to cancel open orders in expiring rights and warrants that to hold investors to a commitment they did not make. For the same reason, the Commission believes that the Amex's current proposal is fair to the market participants with open orders in other expiring equity securities.

[19] *See supra*, note 10.

[20] *Id.*

[21] To date, the Amex is not aware of any complaints regarding automatic cancellation of open orders in expiring rights and warrants or regarding the adequacy of notice thereof. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on December 9, 1994.

[22] 15 U.S.C. 78s(b)(2) (1988).

[23] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-35111; File Nos. SR-BSE-94-16, SR-CBOE-94-52, SR-CHX-94-24, SR-CSE-94-10, SR-PHLX-94-68, SR-PSE-94-36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Incorporated, Cincinnati Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., and Pacific Stock Exchange Incorporated Relating to the Listing of Securities Resulting From Limited Partnership Rollups

December 16, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 10 and December 1, 12, 15, and 16, 1994, the Chicago Stock Exchange, Incorporated ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Stock Exchange Incorporated ("PSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), and the Boston Stock Exchange, Inc. ("BSE") and the Philadelphia Stock Exchange, Inc., ("PHLX"), respectively, (herein collectively referred to as "Exchanges") filed with the Commission the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by the Exchanges. On December 13, 1994, the CSE filed Amendment No. 1, to its proposed rule change.[3] In addition, the PSE and the CHX each filed an Amendment No. 1 to their proposed rule changes on December 14, 1994.[4] Each of these amendments made non-substantive, clarifying changes to the proposals and are incorporated into the discussion below. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The Exchanges are proposing to amend their rules to implement additional listing standards for the listing of limited partnership rollup securities.[5] The text of the proposed rule changes are available at the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they had received. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

IN December 1993, Congress adopted the Limited Partnership Rollup Reform Act of 1993 ("Rollup Reform Act") to regulate limited partnership rollups. The Rollup Reform Act added subparagraph (9) to Section 6(b) of the act[6] to require that the rules of an exchange must prohibit the listing of any security issued in a limited partnership rollup transaction, "unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including" the procedures specified at Section 6(b)(9) of the Act.

The Exchanges have filed the proposed rule changes to ensure their compliance with the provisions of the Rollup Reform Act. Specifically, these changes provide that securities issued in connection with a limited partnership rollup transaction cannot be listed on any of the Exchanges unless:

A. such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including such procedures as are set forth specifically at Section 6(b)(9) of the Act;

B. a broker-dealer that is a member of the National Association of Securities Dealers, Inc. ("NASD") participated in the rollup transaction; and

C. the issuer has provided the applicable Exchange with an opinion of counsel confirming that the transaction was, in fact, conducted in accordance with NASD procedures.

These last two requirements are designed to enable the Exchanges to rely upon the NASD's regulatory scheme, which recently was approved by the Commission,[7] to govern the listing of rollups. In order to be listed, such a security also will have to satisfy the applicable Exchange's corporate governance and listing standards requirements, as appropriate.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchanges have neither solicited nor received written comments on the proposed rule change.

III. 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

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* letter from Robert P. Ackermann, Secretary and Vice President Regulatory Services, CSE, to Elisa Metzger, Senior Counsel, SEC, dated December 13, 1994.

[4] *See* letter from David T. Rusoff, Attorney, Foley & Lardner, to Elisa Metzger, Senior Counsel, SEC, dated December 14, 1994, amending the CHX's proposed rule filing, and letter from Michael D. Pierson, Senior Attorney, PSE, to Elisa Metzger, Senior Counsel, SEC, dated December 14, 1994, amending the PSE's proposed rule filing.

[5] *See* proposed BSE Rule Chapter XXVII, Paragraph 2260; proposed CBOE Rule 31.5; proposed CHX Rule 7 of Article XXVIII; proposed CSE Rule Section 1.3(6); proposed PSE Rule 3.2(i); and proposed PHLX Rules 803, 805, and 852.

[6] 15 U.S.C. 78f(b)(9) (1988 & Supp. 1993)

[7] *See* Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994).

[8] While all of the Exchanges require such securities to satisfy the applicable Exchange's corporate governance and listing standards requirements, as appropriate, the proposed rules filed by the CBOE and PHLX include a specific requirement that any limited partnership listed on the Exchange shall have at least one corporate general partner, or co-general partner, who satisfies the Exchange's independent director and audit committee requirements.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanges. All submissions should refer to Files Nos. SR–BSE–94–16, SR–CBOE–94–52, SR–CHX–94–24, SR–CSE–94–10, SR–PHLX–94–68, and SR–PSE–94–36 and should be submitted by January 13, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

The Commission finds that the Exchanges' proposals to adopt listing standards for securities issued in limited partnership rollup transactions are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed listing standards are consistent with Section 6 of the Act, including the requirements of Section 6(b)(5),[9] which provides that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

As stated above, Congress adopted the Rollup Reform Act to regulate limited partnership rollups. This act reflects a belief that partnership rollup transactions, when properly structured, may offer significant benefits to investors and for businesses that have used these structures to raise capital. Congress has determined, however, that abusive limited partnership rollup transactions harm investors, undermine investor confidence and threaten capital formation.[10] To curtail these abuses, Congress amended Section 6 of the Act to provide that the rules of an exchange must prohibit the listing of a rollup security "unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including" such procedures as are set forth at subparagraph (9) of Section 6(b) of the Act.

In accordance with the Rollup Reform Act, the Exchanges' proposed rule proposals would adopt new listing standards that would condition the listing of securities issued in a rollup transaction upon satisfaction of the criteria set forth in Section 6(b)(9) of the Act. The new standards also would provide that a broker-dealer that is a member of the NASD must participate in the rollup transaction in which such securities were issued, and that the issuer of such securities must provide the applicable Exchange with an opinion of counsel confirming that the transaction was in fact conducted in accordance with NASD procedures. This would enable the Exchanges to rely upon the regulatory scheme adopted by the NASD (and recently approved by the Commission) to govern the listing of rollups.[11]

The Commission believes that the rule changes would provide important benefits to investors who may be subject to limited partnership rollup transactions by ensuring that their rights are protected in accordance with the intent of Congress as embodied in the Rollup Reform Act. The rule changes would permit rollups to take place but would protect against the abusive practices that have occurred in the past. In particular, these changes would ensure that limited partners are not forced into a rollup but instead have the right to compensation, based on appraisal. These rules also would prevent the unfair conversion and valuation of the general partner's interests in a rollup transaction; prevent investors' voting rights from being unfairly reduced or abridged; prevent the limited partners from having to bear an unfair portion of the costs of a transaction that has been rejected; and prevent the payment of fees to general partners in connection with a rollup that are unfair, unreasonable, or inappropriate.[12]

The Commission finds good cause for approving the Exchanges' proposed rule changes on an accelerated basis prior to the thirtieth day after the date of publication of notice of filing thereof. As indicated above, the Commission recognizes that the rule changes will provide important benefits to investors who may be subject to limited partnership rollup transactions in that the amended proposed rule changes will ensure that investors' rights are protected in accordance with the intent of Congress as embodied in the Rollup Reform Act. In addition, the Exchange's proposals are substantively identical to the proposals of the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. that were published in the **Federal Register** for the full comment period and that are being approved by the Commission this day.[13] In addition, the Commission did receive seven comment letters in response to its release noticing the NASD's proposed regulatory scheme regarding limited partnership rollup transactions.[14] The Commission considered these comments in its order approving the NASD's proposal,[15] which proposal is the basis of the Exchanges' proposals. The Commission believes that accelerated approval of these listing standards for securities issued in limited partnership rollup transactions should benefit investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2),[16] that the proposed rule changes, including the amendments thereto, are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

[FR Doc. 94–31604 Filed 12–22–94; 8:45 am]

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[Release No. 34–35122; File No. SR–NASD–94–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Protection for Member to Member Limit Order Handling on Nasdaq

December 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1994, the National Association of Securities Dealers, Inc. ("NASDA" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] *See* S. Rep. No. 121, 103d Cong., 1st Sess. (1993).

[11] *See* Securities Exchange Act Release No. 34533 (August 15, 1995), 59 FR 43147 (August 22, 1994).

[12] The rules being approved hereby do not directly mandate that such rights be protected. Rather, these rules protect such rights indirectly by requiring that all securities issued in a limited partnership rollup transaction and listed on an Exchange be issued in a transaction conducted in accordance with NASD procedures that do mandate such rights.

[13] *See* Securities Exchange Act Release No. 43890 (October 25, 1994), 59 FR 54647 (November 1, 1994) and Securities Exchange Act Release No. 43889 (October 25, 1994), 59 FR 54650 (November 1, 1994), respectively. No comments were received in connection with these proposals.

[14] *See* Securities Exchange Act Release No. 32312 (May 17, 1993), 58 FR 29655 (May 21, 1993).

[15] *See* note 8, *supra*.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD is filing a proposed rule change regarding the protection of limit orders to expand the scope of limit order protection beyond that presently afforded by member firms to their customers in the Nasdaq Stock Market. Currently, the NASD's Interpretation to the Rules of Fair Practice makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. The new proposal would extend this protection to the customer of a firm that sends a limit order to another member for execution (so-called member-to-member trades), with a proviso that until July 1, 1995, limit order protection for member-to-member customer limit orders greater than 1,000 shares in size will be protected at prices that are superior, but not equal to the limit order price. Below is the text of the proposed rule change. Proposed new language is italicized; language to be deleted is bracketed.

Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. *Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal to or superior to that of the limit order without executing the limit order provided that, prior to July 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order.* In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from a customer *(whether its own customer or a customer of another member)* in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order under the specific terms and conditions by which the order was accepted by the firm, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, *provided that, until July 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order.* Nothing in this section, however, requires members to accept limit orders from *any* customers[s].

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers *and the customers of other member firms* that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the scope of the current Interpretation from protecting only limit orders received from a market maker's own customers to protecting

limit orders that a market maker receives from other member firms for execution, the so-called "member-to-member" limit orders. The background and rationale for adoption of this proposed rule change are discussed below.

I. Background

A. *The Existing Interpretation.* In July 1994, a limit order protection rule became effective for NASD members accepting limit orders in Nasdaq securities.[1] Under the existing Limit order Interpretation to the Rules of Fair Practice, a member firm cannot accept and hold its customer's limit order in a Nasdaq security and continue to trade that security for its own account at prices that would satisfy the customer's limit order without filling that order at the limit order price or a price more favorable to the customer. The rule renders trading ahead of the customer's order a violation of just and equitable principles of trade. When the NASD initially proposed the limit order rule, it solicited comment from members on the advisability of implementing restrictions on trading ahead for all customer limit orders, including those passed from one member firm to another for execution.[2] The vast majority of members commented that limit order protection for a firm's own customer was appropriate and beneficial to the market, but several cautioned against the potential adverse impact that could result from application of the rule to member-to-member orders. In recognition of the concerns raised, the Board deferred broader application of the rule and commissioned a special Limit Order Task Force to review the issue. The Task Force devoted considerable attention to discussions of the impact such additional rulemaking would have upon the financial viability of the competing dealer system and the potential adverse impacts upon the quality and efficiency of that market structure. Accordingly, the Task Force recommended limit order protection for member-to-member trades that would make it a violation to trade ahead of customer limit orders when the market makers traded at a price superior to the limit order price. The NASD Board thereafter carefully considered the Task Force's recommendation and determined that for member-to-member trades, the membership should consider whether limit order protection should be extended beyond the Task Force recommendation to include protection for customer orders of 1,000 shares or less from member trading at the limit order price and prices superior to that price. The NASD solicited comment on this proposal.

B. Comments Regarding NASD Notice To Members 94–79).

The NASD received 33 letters in response to its proposal to deal with member-to-member limit orders. Twelve member firms supported the proposal as outlined in NTM 94–79.[3] Two members opposed the proposal adopted by the Board, but suggested that the Board adopt the Limit Order Task Force recommendation.[4] Seventeen commenters opposed the proposal for various reasons outlined below.[5] One person expressed no opinion, except that more study should be done.[6] Among the supporters, the commenters generally stated that the proposal would have a positive effect on investor perception of Nasdaq. In particular, two comment letters strongly recommended the expansion of limit order protection to all customer orders regardless of size. For example, Charles Schwab noted that limit order protection should be extended to all orders, regardless of size, and noted that it has already extended limit order protection to all orders that its market making unit, Mayer & Schweitzer, receives, regardless of order origin. According to the Schwab letter, if a limit order protection rule were to be uniformly applied, there would be increased trade volume, quicker executions, and tighter spreads. Schwab also stated the belief that expansion of limit order protection is consistent with just and equitable principles of trade and should promote investor confidence in the Nasdaq market. In addition, Lehman Brothers was equally strong in recommending that the Board's proposal in NTM 94–79 should extend the benefits of limit order protection to all customers without any order size limitations. Lehman noted that the proposal should not have a "significant overall impact on market makers," nor should it have an effect on a market maker's willingness to commit capital. Lehman also noted that a broadened rule would be easier to comply with, and ultimately, would provide strong investor protection benefits.

The firms opposed to any limit order action on member-to-member trades believed that the proposal would adversely affect the dealer market structure. In particular, many of those opposed to the concepts contained in NTM 94–79 concurred in the formulation of the issues as set forth in the Shearman & Sterling letter on behalf of Herzog Heine Geduld. Specifically, that letter stated that the proposal posed the following problems:

(1) The costs of handling limit orders would be cross-subsidized by other market participants;

(2) Illiquid stocks could be adversely affected;

(3) Increased concentration among market making firms could occur, favoring vertically integrated firms;

(4) The resulting concentration could lead to reduced competition;

(5) The proposal could harm liquidity, market maker profits, and spreads; and

(6) The proposal could allow for undetectable "smurfing" (the breaking up of larger orders to fit within the 1,000 share limit order protection).

C. *SEC Action.* Shortly after the Board's publication of its original proposal, on September 29, 1994, the Securities and Exchange Commission proposed a new rule, Rule 15c5–1,[7] that would prohibit a market maker in Nasdaq National Market Securities from trading for its own account, directly or indirectly, at a price at which the market maker could execute a customer limit order it is holding, without executing the customer's limit order at the limit price or a price more favorable to the customer, under the specific terms and conditions by which the order is accepted by the market maker. Although the rule as proposed would apply only to Nasdaq National Market securities, the SEC solicitated comment on the feasibility of extending the limit order protection to other securities, including SmallCap and OTC Bulletin Board securities. The Commission also solicited comment on the terms and conditions provisions in its rule, which would allow the parties to a trade to set

[1] *See* Notice to Members 94–58 and Securities Exchange Act Release No. 34279 (June 29, 1994

[2] *See* Notice to Members 93–49 (July 23, 1993).

[3] *See* letters from: (1) Santa Barbara Securities, Inc.; (2) Southwest Securities; (3) Wilshire Capital Management; (4) Freeman Welwood & Co., Inc.; (5) The Advest Group, Inc.; (6) R.A. Mackie & Co., LP; (7) Mericor Financial Services; (8) Absolute Investments; (9) Charles Schwab; (10) Lehman Brothers; (11) Merrill Lynch; and (12) A.G. Edwards & Sons, Inc. Merrill and A.G. Edwards qualified their support for the proposal, essentially agreeing with the details of the proposal, but urged that staff examine several additional issues that could arise with the adoption of the rule as proposed.

[4] Letters from: (1) Sherwood Securities Group; and (2) Security Traders Association.

[5] Two comment letters from the same organization, Herzog Heine Geduld, were received which accounts for the discrepancy in the number totals. A number of the negative letters made reference to the Herzog/Shearman & Sterline Letters. Five of the negative comment letters are form letters form traders within two firms, one of which, Southwest Securities, submitted a comment letter supporting the Board's proposal.

[6] Letter from Andrew Peck Associates, Inc.

[7] Securities Exchange Act Release No. 34753 (September 29, 1994); 59 FR 50866 (October 6, 1994).

special conditions to order handling parties to allow a market maker to employ the appropriate strategy in filling a larger sized order without being subjected to the requirements of the proposed rule. In particular, the Commission solicited comment on whether the rule should specifically distinguish orders by measurable characteristics, such as number of shares or dollar amount.

II. Expanded Limit Order Protection

After carefully weighing the ramifications of its actions on the liquidity in the Nasdaq Stock Market and after reviewing the comments it received on this proposal, the NASD determined that it should further expand limit order protection for all customer orders. The NASD has determined that all customer limit orders for Nasdaq securities—whether originating within the firm or at another member firm—should be protected from trading ahead by the market maker holding the order. Thus, under the NASD's new Limit Order Interpretation to the Rules of Fair Practice Article III, Section 1, a member firm cannot accept and hold a customer's limit order in a Nasdaq security and continue to trade that security for its own account at prices that would satisfy the customer's limit order without filling that order at the limit order price or a price more favorable to the customer. Such "trading ahead" activity would be a violation of just and equitable principles of trade. Of course, the expansion of the Interpretation continues to permit a member to establish with its customers specific terms and conditions with regard to the acceptance of limit orders, provided that the member makes those terms and conditions clear to the customer at the time the order is accepted by the firm so that trading ahead in the firm's market making capacity does not occur. Similarly, the Interpretation continues in place the understanding that nothing in the Interpretation would obligate a market maker to accept limit orders from any or all customers or member firms. However, in recognition that the expansion of the Interpretation represents a significant change in the operation of a dealer market, the new Interpretation contains a phase-in period to expire on July 1, 1995, during which time, the NASD will permit member firms to handle member-to-member limit orders that are larger than 1,000 shares in size differently Such orders during this phase-in period must be protected when the member firm accepting the order trades for its own account at prices that are superior to the limit order but not equal to the limit order price. The NASD believes that this measured implementation of the Interpretation is wholly prudent given the nature of the adjustment being made by certain firms in their order handling procedures and the potential need for reassessment of the existing revenue structure. During this period, the NASD will evaluate carefully any adverse impact the new Interpretation may be having on market maker participation or market quality.

The NASD believes that the expansion of its own Rule will enhance investor confidence in the Nasdaq Stock Market by providing customers with the opportunity to improve the quality of executions of their orders. When a customer limit order is given priority over a market maker's own trading activity, it is likely that the customer's order will be executed more quickly and efficiently than before. Price discovery may also be improved in that limit orders may contribute to the tightening of spreads between the bid and ask prices of a security.

Expansion of limit order protection to so-called member-to-member limit orders eliminates any adverse effect on customer protection that may have arisen depending on whether the customer's broker was also a market maker in a particular security. The NASD carefully considered the potential negative effects on the Nasdaq market (loss of market liquidity, concentration of market making firms and lack of sponsorship for smaller capitalized companies) that could occur with the expansion of limit order protection. The NASD has determined that in the long term, any such negative effects should be outweighed by the increased benefits to customers receiving the expanded protection and accordingly, there should be an increase in investor confidence and participation in the Nasdaq Stock Market. In this connection, the NASD notes that Nasdaq market makers are free to negotiate additional compensation from order routing firms to the extent that such compensation is economically and competitively justified.

However, because a requirement that market makers yield priority to the execution of customer interest could have a short-term, temporary effect on the market maker' ability to offer liquidity at the limit order price, the NASD has proposed in its rule to delay the complete effectiveness of the rule for six months. Therefore, until July 1, 1995, market makers would be allowed to trade at the same price as the limit order price for orders over 1,000 shares. Accordingly, the NASD has determined that it is appropriate to propose limit order protection standards which appropriately differentiate between small-sized and large-sized customer limit orders for the first six months that the rule is in effect. For small limit orders (1,000 shares or less), the NASD proposes to implement the same limit order protection that is currently in place for a market maker's own customers—that a market maker may not trade ahead for its own account at a price that would satisfy the limit order price. For larger-sized orders, however, the NASD believes it is appropriate to impose a different standard. When a member accepts and holds a customer limit order greater than 1,000 shares from another member firm, the dealer's obligation to fill that limit order would be triggered when the market maker trades at a price that is superior to the limit order price.

Thus, during the next six months, if the inside market in a Nasdaq issue were 20—20¼ and the market maker accepted a customer buy order from another broker/dealer priced at 20 for 2,000 shares, when the firm buys at any price superior to 20 (that is, purchases at a price lower than a buy limit order, in this example, purchasing at 19⅞ or 19¹⁵⁄₁₆, it would be required to sell to the customer at 20 or better. Using the same example, if the customer limit order were for 500 shares at 20, the rule would prohibit members from trading ahead at 20 without filling the customer order at 20. Accordingly, the proposal would require protection for orders greater than 1,000 shares when the dealer trades at a superior price, and protection for orders of 1,000 shares or less when the dealer trades at the limit order price or a price more favorable to the customer.

Consequently, the NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of free and open market and a national market system, and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The NASD has looked carefully at the suggestions by some commentators that

smaller and non-integrated firms will be unable to compete with large integrated firms under the new requirement, but can find no substantive support for the position advanced. First, the proposed Interpretation does not eliminate the ability of any firm to compete with respect to service, cost, investment recommendations or other executive parameters. For example, the NASD notes that at least one firm has already announced a new price improvement mechanism for Nasdaq securities. Accordingly, while the NASD will monitor carefully for an adverse competitive effects of the Interpretation, the NASD believes that any speculation on potential adverse effects is far outweighed by the enhanced execution opportunities that will be provided to public investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31658 Filed 12–22–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35110; File No. SR–NYSE–94–40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

December 16, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 3, 1994, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE. 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 purpose of this proposed rule change is to amend NYSE's rules to accommodate the implementation of a three business day settlement standard for securities transactions.

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 Purposed Rule Change

In October 1993 the Commission adopted Rule 15c6–1 under the Act which will become effective June 7, 1995.[2] The rule establishes three business days after the trade date ("T+3), instead of five business days ("T+5), as the standard cycle for most securities transactions. In order to accommodate the implementation of T+3, NYSE has identified those rules which requires amendment to provide for compliance with Rule 15c6–1 by members and member organizations. The rules are described below.

Rule 64—"Bonds, Rights and 100-Share-Unit Stocks"

Rule 64(a)(3) currently defines "regular way" dealings as those requiring delivery on the fifth business day of the contract. "Fifth" business day will be changed to "third" business day.[3] Rule 64(a)(5) currently provides that on the second, third, fourth, and fifth business days preceding the final day for subscription, bids, and offers in rights to subscribe shall be made only for delivery next day. Paragraph (a)(5) will be amended to eliminate references to the fourth and fifth business days. Rule 64(c) will be amended to provide that seller's option trades cannot settle on the third business day, rather than the fifth business day, after the trade date.

Rule 65—"Less Than 100-Share-Unit Stocks"

Rule 65(b) will require that an odd lot of stock sold by an odd lot dealer for its own account shall be delivered on the third business day following the day of the transaction rather than permitting delivery between the fifth business day and the fourteenth day following the transaction.

Rule 85—"Cabinet Securities"

Rule 85(d)(3) will require that with respect to ten share unit stocks dealt in by use of cabinets and odd lot sold by a dealer for its own account shall be delivered on the third business day following the day of the transaction

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities and Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (order changing effective date from June 1, 1995, to June 7, 1995).

[3] As proposed, the rule will include in a T+3 environment sales of securities exempted under Commission Rule 15c6-1(b)(2). Specifically, under the proposal, securities sold pursuant to a firm commitment offering registered under the Securities Act of 1993 will have to be settled within three business days.

rather than between the fifth business day and the fourteenth day following the transaction date.

Rule 123A—"Miscellaneous Requirements"

Rule 123A.32 currently states that the liability of a specialist shall not extend beyond the closing price on the third business day where it is deemed that the specialist did not send out a report. It is proposed to delete the word "third" and add the language "following the day of the transaction" after reference to "the business day" in the last paragraph.

Rule 123B—"Exchange Automated Order Routing Systems"

The amendments will shorten the time frames contained in Rule 123B(b)(2)(A) and (B) for correcting execution reports. Rule 123B(b)(2)(A) will require that for most transaction between brokers, if a purchase or sale has been reported in error and a transaction has appeared on the tape at the price of the erroneous report, the broker who made the error will be required to render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2. Rule 123B(b)(2)(B) will require that for orders received by the specialist through the Designated Order Turnaround System or the Limit Order System, if the subscribing member organization requests a correction from the specialist prior to the opening of the second business day, rather than third business day, following the transaction, the specialist shall correct the report. Rule 123B(b)(2)(B) also will require that if the erroneous report is at a price more than one-half point away from the execution price, the specialist must render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2.

Rule 128—"Publications of Changes, Corrections, Cancellations or Omissions and Verification of Transactions"

Rule 128B.10, .12 and .13 apply to tape corrections and other errors. Rule 128B.10 will require that in the event that publication of a change, correction, or cancellation of a transaction which previously appeared on the tape or of a transaction omitted from the tape is not made on the tape on the day of the transaction, such change, correction, cancellation, or omission may be published in the "sales sheet" within three business days, rather than within seven calendar days, of the date of the transaction with the approval of both the buying and selling members and a floor official. Rule 128B.12 will require that erroneous publications made on the tape due to mechanical or system troubles or clerical errors may be corrected in the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction under the direction of an authorized NYSE employee. Rule 128B.13 will require that any other errors in the amount of a transaction reported erroneously to a reporter by a party to the transaction may be published on the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction with the approval of a floor official.

Rule 235—"Ex-Dividend, Ex-Rights"

Rule 235 will be amended to provide that transactions in stocks shall be ex-dividend or ex-rights on the second business day preceding the record date rather than on the fourth business day. With regard to a record date on other than a business day, transactions in stocks shall be ex-dividend or ex-rights on the third preceding business day rather than on the fifth preceding business day.

Rule 236—"Ex-Warrants"

Rule 236 prescribes when ex-warrant trading will begin. The ex-warrant period will be changed to the second business day preceding the date of expiration of the warrants instead of the fourth business day. When warrant expiration occurs on other than a business day, the ex-warrant period will begin on the third business day preceding the expiration date instead of on the fifth business day.

Rule 257—"Deliveries After 'Ex' Date"

Rule 257 provides for the delivery of dividends or rights after the "ex" date or due-bill-check. The seller will be required to deliver dividend or rights three days after record date rather than five days.

Rule 387—"COD Orders"

Rule 387(a)(4) requires a member to obtain an agreement from its customer to deliver instructions to its agent with respect to receipt and delivery of securities within certain time periods. In the case of a purchase by the customer where the agent is to receive the securities against payment (COD), a customer must agree to furnish its agent with instructions no later than the close of business on the second business day, rather than the fourth business day, after the date of execution of the trade as to which the particular confirmation relates. In the case of a sale by the customer where the agent is to deliver the securities against payment (POD), a customer must agree to deliver to its agent instructions by the close of the business on the first day, rather than the third business day, after the date of execution of the trade as to which the particular confirmation relates.

The NYSE's implementation of these rule changes will be consistent with the "T+3" conversion schedule which the National Securities Clearing Corporation has developed for industry use. The schedule is as follows:

"T+3" CONVERSION SCHEDULE—JUNE 1995

Trade date	Settlement cycle	Settlement date
June 2 Friday	5 day	June 9 Friday.
June 5 Monday.	4 day	June 9 Friday.
June 6 Tuesday.	4 day	June 12 Monday.
June 7 Wednesday.	3 day	June 12 Monday.

If the Commission determines to alter the exemptions currently provided in Rule 15c6–1, the NYSE may need to undertake additional rule amendments. It is intended that the proposed rule changes are to become effective on the same date as Commission Rule 15c6–1.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing the risk to clearing corporations, their members, and public investors which is inherent in settling securities transactions. This is accomplished by reducing the time period for settlement of most securities transactions which will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. The proposed change also is consistent with Commission Rule 15c6–1 which requires brokers or dealers to settle most securities transactions no later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE believes that the proposed rule change will not 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 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 also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–94–40 and should be submitted by January 13, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31602 Filed 12–22–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35107; File No. SR–PSE–94–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Financial Arrangements of Options Market Makers

December 16, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 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 Exchange. 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 is proposing to amend Rule 6.40 regarding financial arrangements of market makers and the trading restrictions that are imposed on market markers who have financial arrangements with other members or member organizations. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 PSE 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 Exchange is proposing to amend Rule 6.40 regarding financial arrangements of options market makers. First, the Exchange proposes to amend its definition of "financial arrangements" to focus on the nature of the market maker's trading account and the financial interest that a member or member organization may have in the market maker's trading account.[3]

Second, the Exchange is proposing to modify the trading restrictions that are imposed on market markers who have financial arrangements so that two floor officials may grant an exemption from the rule prohibiting market makers with financial arrangements from trading in the same option series. Specifically, the amended rule would allow two financially affiliated market makers to trade in the same crowd or the same series, but only if they obtain a written exemption from two floor officials. Such an exemption may only be granted on the basis of a demonstrated need.

Finally, the Exchange proposes to add several commentaries to Rule 6.40 that are intended to clarify the purpose of the rule, the application of the rule regarding lead market makers ("LMMs"), and the process for granting exemptions to the trading restrictions set forth in the rule. Commentary .04 would state that the purpose of Rule 6.40 is to prevent market makers who have financial arrangements with each other from unfairly dominating the market in option contracts of a particular class, as prohibited by Rule 6.37(c)(2). Commentary .04 would further provide that any market makers who are not technically covered by the terms of Rule 6.40, but who unfairly dominate the market in any class of options, shall be considered to be in violation of their obligation to contribute to the maintenance of fair and orderly markets and to act in accordance with just and equitable principles of trade.

Proposed Commentary .05 would codify the Exchange's existing policy that two or more LMMs who are trading on behalf of the same member organization may not bid, offer, and/or trade in the same option series at the same time. The proposed Commentary also provides that two or more LMMs who do not have financial arrangements with each other are permitted to bid, offer and/or trade in the same option series at the same time.[4]

Proposed Commentary .06 provides that the exemptions to the trading restrictions in Rule 6.40(b) may

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Specifically, two Exchange members will be deemed to have a "financial arrangement" with each other if: "One Member directly finances the other Member's dealings upon the Exchange and has a beneficial interest in the other Member's trading account such that the first Member is entitled to at least ten percent of the second Member's trading profits," or where "[b]oth members are trading for the same joint account."

[4] *See generally* PSE Rule 6.82 (Lead Market Maker System Pilot Program).

ordinarily be granted for the purpose of providing liquidity in a trading crowd. An exemption may also be granted if two floor officials determine that the individual situation warrants such action. Commentary .06 further provides that unless otherwise specified, any exemption granted pursuant to the rule shall extend for no longer than the trading day on which it is issued. Moreover, Commentary .06 provides that the Exchange's Options Floor Trading Committee ("Committee") shall review, on a regular basis, the exemptions granted pursuant to Rule 6.40(b).

Finally, in proposed Commentary .07, the Committee acknowledges that inadvertent violations of the trading restrictions in Rule 6.40(b) may occur and that the Committee shall ordinarily treat such violations as technical violations of the rule.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 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 PSE. All submissions should refer to File No. SR–PSE–94–24 and should be submitted by January 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31603 Filed 12–22–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20782; 812–9252]

United Funds Inc. et al.; Notice of Application

December 16, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: United Funds, Inc., United Retirement Shares, Inc., United International Growth Fund, Inc., United Continental Income Funds, Inc., United Vanguard Fund, Inc., United Municipal Bond Fund, Inc., United High Income Fund, Inc., United Government Securities Fund, Inc., United New Concepts Fund, Inc., United Gold & Government Fund, Inc., United Municipal High Income Fund, Inc., United High Income Fund II, Inc., United Cash Management, Inc., and United Asset Strategy Fund, Inc. (collectively, the "United Group Funds"); Waddell & Reed Funds, Inc. (the "W&R Funds"); Waddell & Reed Investment Management Company ("WRIMCO"); Waddell & Reed, Inc. ("Waddell & Reed"); and any future open-end management investment company or series thereof (a) for which WRIMCO, or any person controlling, controlled by or under common control with WRIMCO, serves as investment adviser and/or Waddell & Reed, or any person controlling, controlled by or under common control with Waddell & Reed, serves as principal underwriter and (b) that issues and sells one or more classes of shares which are identical in all material respects to the classes described in the application.

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATIONS: Applicants request an order which would permit them to offer an unlimited number of classes, add a conversion feature, and assess and, under certain circumstances waive, a contingent deferred sales charge ("CDSC") on redemptions of shares. The order would supersede a prior order that permits certain of the investment company applicants to assess and, under certain circumstances, waive a CDSC on redemptions of shares.

FILING DATES: The application was filed on September 27, 1994, and was amended on November 21, 1994 and December 14, 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 January 10, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 6300 Lamar Avenue, P.O. Box 29217, Shawnee Mission, Kansas 66201–9217.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

[5] 17 CFR 200.30–3(a)(12) (1993).

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the United Group Funds and the W&R Funds (collectively, "Corporations") is a Maryland corporation registered under the Act as an open-end, diversified management investment company.[1] Some Corporations have multiple series, each of which has separate investment objectives and policies (hereinafter, the series of each Corporation, and each Corporation which is organized in other than series form and that in the future is subject to the order requested by this application, are referred to collectively as the "Funds" and individually as a "Fund").

2. For each existing Fund, WRIMCO serves as the investment adviser and Waddell & Reed serves as principal underwriter. WRIMCO is a wholly-owned subsidiary of Waddell & Reed, which is an indirect subsidiary of Torchmark Corporation and United Investors Management Company, and is a direct subsidiary of Waddell & Reed Financial Services, Inc.

3. Existing shares of United Group Funds, other than United Cash Management, Inc.[2] and United Asset Strategy Fund, Inc.,[3] are currently sold at net asset value per share plus a front-end sales charge. Shares of the W&R Funds are sold at net asset value per share plus a CDSC, in accordance with a prior order (the "Prior Order").[4] In addition to the front-end sales charge and the CDSC described above, each Fund, other than United Cash Management, Inc., has adopted a rule 12b–1 plan.

A. The Multiple Class System

1. Applicants seek an exemptive order that would permit the Funds to issue an unlimited number of classes of shares. Each class of such new shares ("New Shares") of a Fund would be identical in all respects, except that: (a) Each class of shares would have a different class designation; (b) certain classes of shares may have different sales charges; (c) certain classes of shares may bear fees under a plan adopted pursuant to rule 12b–1 ("12b–1 Plan"), a non-rule 12b–1 shareholder services plan ("Shareholder Services Plan"), or a combination of these (collectively, the "Plans"); (d) each class of shares could also bear certain other expenses that are directly attributable only to that class ("Class Expenses," as described in condition 1, below); (e) only the holders of a class of shares would be entitled to vote on matters pertaining to a 12b–1 Plan and any related agreements, or any other matters, relating to such class; (f) exchange privileges could vary among the classes; and (g) only certain classes will have a conversion feature.

2. Each 12b–1 Plan applicable to New Shares would contemplate compensation and/or reimbursement to the principal underwriter for: (1) the distribution of shares, the provision of other distribution-related services, and the payment of related expenses ("Distribution Services");[5] and/or (2) the provision of certain personal and/or account maintenance services and the payment of related expenses ("Maintenance Services").[6] The amount of 12b–1 Plan payments by a class of 12b–1 Shares for Distribution and Maintenance Services will not exceed .75% and .25%, respectively, per annum of the average daily net assets of that class, or such other amount as may be permitted pursuant to applicable NASD rules.

3. Under a Shareholder Services Plan applicable to New Shares, one or more organizations would provide various administrative support services ("Support Services") to shareholders of the particular class.[7] With respect to each class of New Shares, a Fund could enter into Shareholder Services Plan agreements with the principal underwriter and/or other organizations, such as broker-dealers or banks.

4. The Distribution, Maintenance, and/or Support Services provided under the Plans are intended to complement, rather than duplicate, the services to be provided to each Fund by WRIMCO, the principal underwriter, and the various parties that provide custody, shareholder servicing, and accounting services to each Fund. If a class of shares is subject to both a rule 12b–1 Plan and a Shareholder Services Plan, the services provided under one Plan would augment, rather than duplicate, the services provided under the other Plan. In establishing and implementing the Plans, applicants will comply with subsection (d) of Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"), to the extent applicable.

5. The expenses of a Corporation that has established more than one Fund, which expenses cannot be attributed directly to any one Fund ("Corporation Expenses") will be allocated to each Fund based on the relative daily net assets of those Funds. Expenses which may be attributable to a particular Fund, but not to a particular class ("Fund Expenses"), will be allocated to each class of the particular Fund's shares based on the relative daily net assets of the class. Further, Plan payments and Class Expenses will be charged directly to the net assets of the particular class and thus will be borne on a *pro rata* basis by the outstanding shares of such class.

6. The shares in different classes within a Fund will have different exchange privileges. The applicable exchange privileges will comply with rule 11a-3 under the Act.

7. WRIMCO may choose to reimburse or waive Class Expenses on certain classes of the Fund on a voluntary, temporary basis. The amount of Class Expenses reimbursed or waived by WRIMCO may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Fund.

[1] Each Corporation reserves the right to, and may, from time to time, reorganize from corporate to business trust or other form under the laws of another state, consistent with applicable state and federal law and the Corporation's articles of incorporation. Except as otherwise noted herein, references to Corporations, Directors, and articles of incorporation shall be deemed to apply to any form in which a Corporation or Fund may be organized.

[2] Existing shares of United Cash Management, Inc. are sold at net asset value, without the imposition of a front-end sales load or CDSC.

[3] On October 3, 1994, United Asset Strategy Fund, Inc. filed a registration statement to register its shares under the Securities Act of 1933. As of the date of this notice, its registration had not yet become effective.

[4] Investment Company Act Release Nos. 18777 (June 11, 1992) (notice) and 18833 (July 7, 1992) (order). The Prior Order permits W&R Funds, WRIMCO, and Waddell & Reed to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants request that any order granted pursuant to this applicant supersede the Prior Order.

[5] These expenses may include, for example, advertising expenses, costs of printing and mailing to prospective shareholders prospectuses and other sales promotion materials relating to the applicable Fund, costs relating to the Distributor's selling and servicing activities, including, among other things, employee salaries and overhead expenses, and ongoing fees to entities that have sold shares subject to a rule 12b–1 Plan ("12b–1 Shares").

[6] These expenses may include, for example, ongoing fees to entities that provide such services.

[7] These services may include, for example, preparing, printing, and distributing prospectuses and annual reports to shareholders; ensuring compliance with securities laws; processing purchase, exchange, and redemption requests for shares from customers; providing information to shareholders concerning their shares; providing and maintaining elective services; acting as shareholder of record; maintaining account records; and responding to shareholder inquiries.

8. In addition, WRIMCO may waive or reimburse Corporation Expenses and/or Fund Expenses (with or without a waiver or reimbursement of Class Expenses), but only if the same proportionate amount of Corporation Expenses and/or Fund Expenses is waived or reimbursed for each class of a Fund. Thus, any Corporation Expenses that are waived or reimbursed would be credited to each class of a Fund according to the relative net assets of the classes. Similarly, any Fund Expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes. Corporation Expenses and Fund Expenses apply equally to all classes of a given Fund. Accordingly, it may not be appropriate to waive or reimburse Corporation Expenses or Fund Expenses at different levels for different classes of the same Fund.

9. Shares of one or more classes ("Purchase Class Shares") may automatically convert to another class ("Target Class Shares") after a prescribed period of time. It currently is expected that such Purchase Class Shares will convert to Target Class Shares following the expiration of approximately eight years from the purchase date, although a shorter period may be prescribed.

10. Purchase Class Shares in a shareholder's account that were acquired through the reinvestment (or payment in shares) of dividends and other distributions paid in respect of Purchase Class Shares will be considered to be held in a separate sub-account ("Dividend Purchase Shares"). Each time any Purchase Class Shares in the shareholder's account covert to Target Class Shares, a *pro rata* share of the Dividend Purchase Shares also will convert to Target Class Shares. The portion converted will be determined by the ratio that the shareholder's convertain Purchase Class Shares bears to the total of the shareholder's Purchase Class Shares subject to the conversion feature, excluding Dividend Purchase Shares.

11. The conversion of the Purchase Class Shares into Target Class Shares will be subject to the availability of an opinion of counsel or an Internal Revenue service private letter ruling to the effect that the conversion of the Purchase Class Shares does not constitute a taxable event under federal income tax law. The proposed conversion feature may be suspended if such a ruling or opinion is not available.

B. The CDSC

1. Applicants also seek to impose a CDSC on redemptions of certain classes of shares of the Funds ("CDSC Shares") and to waive or reduce the CDSC with respect to certain types of redemptions. Under the proposed CDSC arrangement, some or all shares of certain classes of a Fund may be subject to a CDSC if such shares are redeemed or repurchases within a prescribed period of time after their purchase. The CDSC may be imposed at a constant or declining rate over a specified period of years. No CDSC will be imposed with respect to: (a) the portion of redemption or repurchase proceeds attributable to increases in the value of the shares due to capital appreciation; (b) shares representing reinvestment or payment of dividends or other distributions; or (c) shares held for more than a certain time after their purchase. The amount of a CDSC would be calculated as the lesser of the net asset value of the shares at the time of purchase and the net asset value of the shares at the time of repurchase or redemption.

2. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time. This will result in any such charge being imposed on the fewest number of shares at the lowest possible rate. The amount of the CDSC and the circumstances and timing of its imposition may vary among classes and may be changed with respect to any class. The Funds may change the length of time during which the CDSC will be imposed or the percentage used to calculate the amount of the CDSC, if issued shares would be unaffected or, if such issued shares would be affected, the changes would be to shareholders' benefit. Except in accordance with the Prior Order, a CDSC will not be imposed on any shares issued by the Funds prior to the date of the order requested by this application.

3. Each Fund will have the ability to waive or reduce a CDSC in connection with certain categories of transactions, as described in that Fund's prospectus. In waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 18(f)(1) and 18(g) of the Act to the extent that the proposed creation, issuance, and sale of multiple classes of shares may result in a "senior security" prohibited by section 18(f), and in a violation of section 18(i) of the Act to the extent that the different voting rights associated with such classes may be deemed to result in one or more classes of shares having unequal voting rights with other classes of shares. In addition, applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder, to the extent necessary to permit the proposed CDSC arrangement.

2. Applicants believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowing and will not affect the Funds's existing assets or reserves. It will not increase the speculative character of the shares in a Fund, since all shares will participate in all of the Fund's appreciation, income, and expenses in the manner described in the representations above.

Applicants' Conditions

Applicants agree that the order granting the requested exemptions will be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Fund will relate solely to one or more of the following: (a) Expenses assessed to a class pursuant to a Plan, if any, with respect to such class; (b) the impact of Class Expenses, which are limited to any or all of the following: (i) transfer agent and shareholder servicing fees identified as being attributable to a specific class of shares, (ii) stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class of shares, (iii) Blue Sky registration fees incurred by a specific class of shares, (iv) Commission registration fees incurred by a specific class of shares, (v) expenses of administrative personnel and services as required to support the shareholders of a specific class of shares, (vi) Directors' fees or expenses incurred as a result of issues relating to a specific class of shares, (vii) accounting expenses relating solely to a specific class of shares, (viii) auditors' fees, litigation expenses, and legal fees and expenses relating to a specific class of shares, (ix) expenses incurred in connection with shareholders meetings as a result of issues relating to a specific class of shares, and (x) any other expenses subsequently identified which

should be properly allocated to a specific class of shares and which, as such, are approved by the Commission pursuant to an amended order; (c) certain classes of shares may have different sales charges; (d) the fact that the classes will vote separately with respect to matters relating to the applicable Plan or any other matters, if any, relating to a class, except as provided in condition 16 below; (e) the different exchange privileges of the classes of shares, if any; (f) the designation of each class of shares of a Fund; and (g) the fact that only certain classes will have a conversion feature.

2. The Board of Directors of each Corporation, including a majority of the Directors who are not interested persons of the Corporation ("Independent Directors"), will have approved the Multiple Class System with respect to a particular Fund of the Corporation prior to the implementation of the system by that Fund. The minutes of the meetings of the Board of the Corporation regarding the deliberations of the Directors with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for the determination by the Board that the proposed Multiple Class System is in the best interests of each Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the appropriate Board of Directors, including a majority of the Independent Directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the applicable Board, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Board of each Corporation, pursuant to its fiduciary responsibilities under the Act and otherwise, will monitor each Fund, as applicable, for the existence of any material conflicts among the interests of the classes of its shares, if there is more than one class. The Board, including a majority of the Independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each Fund's principal underwriter and investment adviser will be responsible for reporting any potential or existing conflicts to the appropriate Board. If such a conflict arises, the Fund's principal underwriter and investment adviser, at their own expense, will take such actions as are necessary to remedy such conflict, including establishing a new registered management investment company, if necessary.

5. Each Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The principal underwriter of each Fund implementing a Multiple Class System will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

7. The Board of Directors of each Corporation will receive quarterly and annual statements concerning the amounts expended under the Corporation's Plans complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee for Distribution, Maintenance, or Support Services charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Board of justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors in the exercise of their fiduciary duties.

8. Dividends and other distributions of income, including capital gains, paid by the Fund with respect to each class of its shares, to the extent any such dividends and other distributions are paid, will be declared and paid on the same day and at the same time, and will be determined in the same manner and will be in the same amount, except that the amount of dividends and other distributions declared and paid by a particular class may be different from that of another class because of Plan payments made by a class and Class Expenses borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which is attached as Exhibit A to the originally filed application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on "policies and procedures placed in operation" in accordance with Statement of Auditing Standards ("SAS") No. 70, "Reports on the Processing of Transactions by Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70 of the AICPA, as it may be amended from time to time, or such other applicable auditing standards as may be adopted by the AICPA.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 9, above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9, above. Applicants will take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation

for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Funds.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Board of each Fund with respect to the Multiple Class System will be set forth in guidelines that will be furnished to the Directors.

13. Each Fund implementing a Multiple Class System will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales charges, and exchange privileges applicable to each class of its shares in every prospectus, regardless of whether all classes of its shares are offered pursuant to each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of its shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of that Fund's shares. The information provided by an applicant for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of that Fund's shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval of, authorization of, or acquiescence in any particular level of payments that any Fund may make pursuant to a Plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales charge, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to a 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 Shareholder Services Plan) that would increase materially the amount that may be borne by the Target Class Shares under the 12b–1 Plan, then existing Purchase Class Shares will stop converting into the Target Class Shares unless Purchase Class shareholders, voting separately as a class, approve the proposal. If the holders of a majority of the Purchase Class Shares fail to approve such amendment, the Directors shall take such action as is necessary to ensure that existing Purchase Class Shares are exchanged or converted into a new class of shares ("New Target Class Shares"), identical in all material respects to Target Class Shares as they existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into Target Class Shares. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Purchase Class Shares for a new class ("New Purchase Class Shares"), identical to existing Purchase Class Shares in all material respects except that the New Purchase Class Shares will convert into the New Target Class Shares. The New Target Class Shares and New Purchase Class Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of the New Target Class Shares or New Purchase Class Shares will be borne solely by the investment adviser and the principal underwriter. Purchase Class Shares sold after the implementation of the amended 12b–1 Plan may convert into Target Class Shares subject to the higher maximum payment, provided that the material features of the amended 12b–1 Plan applicable to the Target Class Shares and the relationship of such amended 12b–1 Plan to the Purchase Class Shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–31530 Filed 12–22–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2144]

Asia Pacific Economic Cooperation (APEC) Ad Hoc Group of the United States International Telecommunications Advisory Committee (ITAC) Meeting Notice

The Department of State announces that the Ad Hoc Group for the Asia Pacific Economic Cooperation (APEC) of the United States International Telecommunications Advisory Committee (ITAC) will meet January 13, 1995, in Room 6824, 10:00 a.m. to noon, at the Department of State, 2201 "C" Street, N.W., Washington, D.C.

The purpose of the APEC Ad Hoc Group of the ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues related to U.S. participation in the APEC Working Group on Telecommunications. The agenda of this first formal meeting of the ITAC Ad Hoc Group for APEC will include: (1) a review of the nomination process for the U.S. delegation to the APEC Working Group on Telecommunications (TEL) meetings; (2) preparation for the TEL's eleventh meeting in Vancouver, Canada February 22–24, 1995; (3) a status report on plans for the APEC-OECD-PECC Symposium on the Information Infrastructure, Vancouver, Canada, February 20–21, 1995; and (4) a status report on the proposal to establish an Asia Pacific Information Infrastructure (API).

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. All persons planning to attend should advise the Department by leaving your name, social security number and date of birth on 202–647–0201, no later than two days before the meeting. Enter through the main lobby on C Street. A picture ID will be required for admittance. For further information, please call Gary De Vight on 202–647–3234.

Dated: December 19, 1994.

Gary D DeVight,

Chair, U.S. Delegation to the APEC Working Group on Telecommunications.

[FR Doc. 94–31533 Filed 12–22–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–113]

Navigation Safety Advisory Council, Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Navigation Safety Advisory Council (NAVSAC).

DATES: Completed applications and resumes must be received by February 15, 1995. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: To request an application, either call (202) 267–0415 and give your name and mailing address or write to Commandant (G–NSR–3), U.S. Coast Guard, 2100 Second St., SW., Room 1420, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council (NAVSAC), Room 1420, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Council is a twenty-one member Federal advisory council that advises the Coast Guard on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The applications will be considered for seven (07) expiring terms. The Council consists of 21 members who have expertise, knowledge and experience in the Navigation Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

The three-year membership term begins July 1, 1995, and, assuming that the Council is continued beyond September 30, 1995, will expire June 30, 1998. Those persons who have submitted previous applications must reapply as no applications received prior to this solicitation will be considered.

The Council meets twice each year at various sites in the continental United States. Members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

Dated: December 16, 1994.

G.A. Penington,

Rear Admiral, Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–31629 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Research, Engineering and Development Advisory Committee; Security Research and Development Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Scientific Advisory Panel of the Security Research and Development (R&D) Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development Advisory Committee to be held Tuesday and Wednesday, January 10 and 11, 1995, at the FAA Technical Center in Atlantic City, New Jersey. The meeting will be held in the Conference Room in Building 315. This will be a partially closed meeting.

On Tuesday, January 10, the meeting will be open to the public. It will begin at 9 a.m. and end at 6 p.m. The agenda for the meeting will include: an overview of the Security R&D program; a report on Explosive Detection System (EDS) Certification process; a laboratory tour; and development of recommendations for EDS deployment and systems integration and alarm bag management.

Attendance on Tuesday, January 10, is open to the interested public, but limited to space available. With the approval of the panel chairperson, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact the Designated Federal Official, Dr. Lyle Malotky, FAA/ACS–20, 800 Independence Avenue, S.W., Washington, D.C. 20591, at 202/267–3967.

On Wednesday, January 11, the meeting will be closed to the public. This portion of the meeting will be devoted to a review and discussion of issues that have been classified as Secret or Confidential for purposes of national security, which fall under exemption 5 U.S.C. 552b(c)(1).

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, D.C., on December 19, 1994.

Ronald E. Morgan,

Acting Associate Administrator for System Engineering and Development.

[FR Doc. 94–31556 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development, Advisory Committee; Environment and Safety Subcommittee

Pursuant to Section 10(A(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Environment and Safety Subcommittee will be on January 11, 1995 in Philadelphia, PA at the Boeing Defense and Space Group, Helicopter Division facility, located at Stewart Avenue and Industrial Highway, Building 3–01. The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the Environment and Safety Subcommittee meeting will include the following:

(1) Presentations on environmental and safety issues
(2) Witness Civil Tiltrotor Simulated Noise Demonstration
(3) Review issue papers and draft report material
(4) Review Subcommittee Assumptions
(5) Review Subcommittee Work Plan/Schedule

Security arrangements require that all persons who plan to attend the meeting must notify Ms. Deborah Ogunshakin at (202) 267–9451 or Mrs. Karen Braxton at 202–267–8759 *By January 6, 1995.*

Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Ogunshakin or Mrs. Braxton at least three days prior to the meeting.

Issued in Washington, D.C., December 16, 1994.

Richard. A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–31587 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Anchorage, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the following proposed highway project in the Municipality of Anchorage, Alaska: C Street, O'Malley Road to Tudor Road.

FOR FURTHER INFORMATION CONTACT: Phillip Smith, Field Operations Engineer, FHWA, Box 21648, Juneau, Alaska 99802–1648. Telephone (907) 586–7428. Jim Childers, P.E., Project Manager, ADOT&PF, Preliminary Design & Environmental, P.O. Box 196900, Anchorage, Alaska 99519–6900. Telephone (907) 266–1547.

SUPPLEMENTARY INFORMATION: The FHWA and ADOT&PF will prepare an EIS for the C Street, O'Malley Road to Tudor Road Project. The project corridor runs north-south for approximately four miles, the southern most mile between O'Malley Road (or the Minnesota Extension) and Dimond Boulevard does not currently exist.

The proposed project includes the evaluation of alternatives to improve C Street between Tudor Road and Dimond Boulevard, a predominantly two-lane arterial. Also, the project includes the evaluation of various alternatives to improve Anchorage's north-south traffic flow including: (1) Extending C Street from Dimond Boulevard to O'Malley Road, (2) upgrading other north-south arterials, (3) mass transit, (4) other transportation system and congestion management alternatives and (5) no-action.

Roadway improvement alternatives would also include widening the bridge over Campbell Creek, a grade separation at the Alaska Railroad crossing, pedestrian and bicycle facility expansion and/or improvements, and drainage improvements.

The proposed project is necessary to alleviate existing capacity problems and meet Anchorage's future transportation needs. An increase in population as well as new commercial and residential development in south Anchorage have resulted in a need to improve travel to and from south Anchorage. The proposed action is an integral part of the Anchorage Metropolitan Area Transportation Study (AMATS) Long Range transportation Plan and Transportation Improvements Plan and the Municipality of Anchorage Official Streets and Highway Plan. Additionally, C Street is a designated primary transit corridor. The proposed project would facilitate improved transit service. The proposed project will also address the historically high accident rate on the southern section of C Street.

The Anchorage area is currently listed as a moderate nonattainment area relative to carbon monoxide emissions. This non-attainment is in part a result of traffic congestion. The proposed action would aid in relieving traffic congestion to and from south Anchorage.

Scoping activities including obtaining the expertise of appropriate Cooperating Agencies will continue throughout 1995. Various scoping activities include mailings, presentations, and meetings, have been incorporated into the project schedule and will be held with both public and private entities throughout 1995. After the scoping process has been completed, a Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the time and place of the scoping meetings and public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. The Corps of Engineers Section 404 Wetlands Permit process will be merged with the EIS process on this project.

Comments or questions concerning this proposed project should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 14, 1994.

Robert E. Ruby,

Division Administrator, Federal Highway Administration.

[FR Doc. 94–31536 Filed 12–22–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–86; Notice 1]

Request for Comments on Incompatibilities in Automotive Standards That Apply in Canada, Mexico, and the United States

AGENCY: National Highway Traffic Safety Administration (NHSTA), DOT.

ACTION: Request for comments.

SUMMARY: The North American Free Trade Agreement (NAFTA) established an Automotive Standards Council consisting of representatives of Canada, Mexico, and the United States. The Automotive Standards Council is a forum for trilateral consultations on standards-related matters that apply to automotive goods. At its initial meeting, the Automotive Standards Council discussed development of a work plan to try to attain compatibility among the safety and environmental standards in the three countries that apply to motor vehicles, motor vehicle equipment, and non-road engines. This notice solicits public comments to identify instances of incompatibility among the motor vehicle standards of Canada, Mexico, and the United States, and their respective political subdivisions, that have resulted in barriers to trade.

DATES: Comments on this notice must be received by NHTSA no later than February 6, 1995.

ADDRESSES: Comments should refer to the docket and notice number shown in the heading of this notice and be submitted to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590. Docket hours are 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis J. Turpin, Director, Office of International Harmonization, NHTSA, Room 5220, 400 Seventh Street, SW, Washington, D.C. 20590. Mr. Turpin can be reached by telephone at (202) 366–2114; or

Mr. Thomas M. Baines, Senior Technical Advisor, U.S.

Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Mr. Baines can be reached by telephone at (313) 668–4366.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement (NAFTA) is a trilateral trade agreement among the Governments of Canada, Mexico, and the United States. Article 913 of NAFTA establishes a Committee on Standards-Related Measures, comprising representatives of each of the three parties. Paragraph 5 of Article 913 requires the Committee on Standards-Related Measures to establish four subcommittees, one of which is the Automotive Standards Council. The purposes of the Automotive Standards Council is "to the extent practicable, to facilitate the attainment of compatibility among, and review the implementation of, national standards-related measures of the [three Nations] that apply to automotive goods, and to address other related matters." *See* NAFTA Annex 913.a–3. The NAFTA includes non-road engines as well. Thus, the term "automotive," as used in this notice, includes non-road engines.

The initial meeting of the Automotive Standards Council was held on September 1, 1994 in Ottawa, Ontario, Canada. NAFTA Annex 913.5.a–3.3 gives the Automotive Standards Council authority to establish consultation procedures and appropriate operational mechanisms. Pursuant to this authority, the representatives of the three governments agreed to solicit input from interested parties in their respective countries to identify incompatibilities that have created or could create needless barriers to trade.

In accordance with this decision, this notice solicits comments and information from all interested parties regarding incompatibilities in automotive standards between at least two of the three NAFTA countries that the United States delegation should seek to have the Automotive Standards Council address in its initial work plan. Commenters should provide as much detail as possible and should rank the incompatibilities they have identified in order of priority, using the following criteria for prioritizing identified incompatibilities:

(a) the impact on industry integration;
(b) the extent of the barriers to trade;
(c) the level of trade affected;
(d) the extent of the disparity; and
(e) the impact on vehicle safety and the environment.

The United States delegation to the Automotive Standards Council will take the information it receives in comments on this notice to the next meeting of the Automotive Standards Council. The next meeting is tentatively scheduled to be held in Mexico City, Mexico, in February 1995. The Canadian and Mexican delegations are expected to bring their countries' identification of incompatibilities to that meeting. After evaluating the problems identified by each country, the Automotive Standards Council will then select some or all of them for inclusion in its initial work plan for addressing incompatibilities.

The United States delegation to the Automotive Standards Council invites written comments from all interested parties. Commenters are asked to provide as much detail as possible about barriers to trade posed by incompatibilities and to address the criteria listed above in their comments.

Issued on December 19, 1994.

Francis J. Turpin,
Director, Office of International Harmonization.

[FR Doc. 94–31584 Filed 12–20–94; 12:57 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 16, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0012
Form Number: FMS Form 6314
Type of Review: Extension
Title: Annual Financial Statements of Surety Companies—Schedule F
Description: The information obtained is used to compute the amount of unauthorized reinsurance in determining Treasury Certified Companies' underwriting limitations which are published in Treasury Circular 570 for use by Federal Bond approving officers.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 385
Estimated Burden Hours Per Response: 62 hours, 30 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 16,324 hours
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 94–31526 Filed 12–22–94; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

December 15, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0949
Form Number: IRS Form 2587
Type of Review: Revision
Title: Application for Special Enrollment Examination
Description: This information relates to the determination of the eligibility of individuals seeking enrollment status to practice before the Internal Revenue Service.
Respondents: Individuals or households
Estimated Number of Respondents: 8,000
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: Other (one time filing)
Estimated Total Reporting Burden: 800 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive

Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–31524 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

December 15, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New

Form Number: None

Type of Review: New collection

Title: Testing Session to Measure Effectiveness of Comprehensibility Scoring Formula Methodology

Description: To further its corporate goal of reducing taxpayer burden, the IRS is conducting research to evaluate a methodology for improving the comprehensibility of tax forms. Testing sessions are necessary to provide quantitative evaluation. Subjects will include 1040 and 1040A tax filers. IRS will use the results to improve tax forms and publications.

Respondents: Individuals or households

Estimated Number of Respondents: 2,400

Estimated Burden Hours Per Respondent: 2 hours

Frequency of Response: Other (one-time testing sessions)

Estimated Total Reporting Burden: 4,400 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–31525 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–0135–M

Public Information Collection Requirements Submitted to OMB for Review

December 13, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1299

Regulation ID Number: IA–54–90 Final

Type of Review: Extension

Title: Settlement Funds

Description: The reporting requirements affect taxpayers that are qualified settlements funds; they will be required to file income tax returns, estimated income tax returns, excise tax returns, and withholding tax returns. The information will facilitate taxpayer examinations.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents: 1,500

Estimated Burden Hours Per Respondent: 25 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 3,751 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–31523 Filed 12–22–94; 8:45 am]

BILLING CODE 4830–01–P

Fiscal Service

Implementation Date for Issuance of Federal Housing Administration (FHA) Debentures in Book-Entry Form

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice is being published to announce the implementation date for the issuance of Federal Housing Administration (FHA) Debentures in book-entry form. The Supplemental Regulations Governing FHA Debentures were amended by a final rule issued August 17, 1994 to provide for issuance of such debentures in book-entry form.

EFFECTIVE DATE: January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, Division of Special Investments, Bureau of the Public Debt (304) 480–7752; Ed Gronseth, Deputy Chief Counsel, or Jim Kramer-Wilt.

SUPPLEMENTARY INFORMATION: On September 30, 1994, the Department of Housing and Urban Development published a final rule in the **Federal Register** (59 FR 49813) to revise 24 CFR Parts 200, 203, 207, 220, 221, 235, 236, 237, 241, and 242 to allow for the issuance of debentures for mortgage insurance claims in book-entry form.

On August 17, 1994, the Department of the Treasury published a final rule in the **Federal Register** (59 FR 42161) to amend 31 CFR Part 337, Supplemental Regulations Governing Federal Housing Administration (FHA) Debentures, also to provide for the issuance of such debentures in book-entry form. Revised Section 337.6 also states that the implementation date for the book-entry debenture system is to be announced in advance by separate public notice.

In accordance with § 337.6, it is hereby announced that implementation of the FHA book-entry debenture system is scheduled to begin January 4, 1995. Requests received on or after January 3, 1995, by the Federal Reserve Bank of Philadelphia for the issuance of debentures in satisfaction of mortgage insurance claims will be honored by the issuance of debentures in exclusively book-entry form. Owners of certificated debentures may also convert the debentures to book-entry form upon appropriate request, beginning on that date.

Dated: December 1, 1994.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 94–31600 Filed 12–22–94; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for VA Homeless Providers Grants, VA Form 10–0362 (Series)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 535–7404.

Comments and questions about the times on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 12, 1995.

Dated: December 7, 1994.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service

Extension

1. Application for VA Homeless Providers Grants, VA Form 10–0362 (Series)
2. The forms will be used by public and non-profit entities to apply for Federal aid to establish supportive services or supportive housing programs that benefit homeless veterans. The information will be used by VA to determine the most qualified to receive grant payments.
3. State or local governments—Non-profit institutions
4. 63,000 hours
5. 50 hours
6. On occasion
7. 1,260 respondents

[FR Doc. 94–31538 Filed 12–22–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 246
Friday, December 23, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:10 a.m. on Tuesday, December 20, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General, and (2) matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currrency), and Chairman Ricki R. Tigert, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: December 20, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregori,

Acting Assistant Executive Secretary.

[FR Doc. 94–31704 Filed 12–21–94; 10:25 am]

BILLING CODE 6714–01–M

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94–94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine o'clock a.m. on Tuesday, December 6, 1994 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide nine appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., John R. Simpson, and Michael J. Gaines.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 8, 1994.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 94–31664 Filed 12–21–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 59, No. 242/Monday, December 19, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATES: 9:30 a.m., Tuesday, December 20, 1994.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required deleting the following item from the agenda at this time and that no earlier announcement was possible.

6502 Recommendations to 37 States, Puerto Rico & District of Columbia: A Lower Blood Alcohol Concentration for All Drivers.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 21, 1994

Bea Hardesty

Federal Register Liaison Officer

[FR Doc. 94–31818 Filed 12–21–94; 3:46 pm]

BILLING CODE 7533–01–P

federal register

Friday
December 23, 1994

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 4, et al.

Federal Acquisition Regulation; Consolidation and Revision of the Authority to Examine Records; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 14, 15, 25, 50, and 52

[FAR Case 94–740]

RIN 9000–AG24

Federal Acquisition Regulation; Consolidation and Revision of the Authority to Examine Records

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) to implement Sections 2201(a) and 2251(a) of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 21, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 94–740 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Tucciarone at (703) 274–7344 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–740.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. In order to promptly achieve the benefits of the provisions of the Act, the Government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

This notice announces FAR revisions developed under FAR case 94–740. By its terms, the Act at Sections 2201(a) and 2251(a) provides that all cost-reimbursement, incentive, time-and-materials, labor-hour or price-redeterminable subcontracts will be subject to audit. Paragraph (g), therefore, requires the flowdown of the Audit and Records—Negotiation clause into all subcontracts of these types and into subcontracts when certified cost or pricing data is required, or when cost performance reports are required. This rule, however, exempts from the flowdown requirement all subcontracts below the simplified acquisition threshold. This conforms the audit rights at the subcontract level with those at the prime contract level.

The foregoing flowdown provisions continue to recognize that individual flowdown paragraphs are self eliminating. This is beneficial. For example, this means that the access to records clause will be included in subcontracts prior to, and in anticipation of issuance of a subcontract modification that requires cost or pricing data. If the prime contract is modified and certified cost or pricing data is required, the prime contractor will be in a better position to obtain post award access to subcontractor records if the clause is already in the subcontract and the prime contractor does not have to negotiate the access to records clause into the subcontract at the time the modification is negotiated. The approach is administratively more convenient to the Government in that the burden of responsibility for ensuring that the clause is included at the time of issuance of a subcontract modification is removed from the contracting officer.

An Alternate III was added to provide for the waiver of the examination of records by the Comptroller General.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–740) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before January 23, 1995.

The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the majority of contracts with small businesses are not subject to the audit requirement. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–740), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose additional recordkeeping or information collection requirements, or additional collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* For civilian agency procurements, recordkeeping is reduced due to the higher cost or pricing data threshold. Overall, the recordkeeping requirements are the minimum required by the Federal Acquisition Streamlining Act.

D. Public Comments

Public comments are necessary because the proposed coverage may have a significant cost or administrative impact on contractors or offerors.

List of Subjects in 48 CFR Parts 4, 14, 15, 25, 50, and 52

Government procurement.

Dated: December 12, 1994.

CAPT. BARRY L. COHEN, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994

Therefore, it is proposed that 48 CFR Parts 4, 14, 15, 25, 50, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 14, 15, 25, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.702 is amended by revising paragraph (a) to read as follows:

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Audit and Records—Sealed Bidding (52.214–26).

(2) Audit and Records—Negotiation (52.215–2).

(3) Audit—Commercial Items (52.215–00).

* * * * *

3. Section 4.703 is amended—

—in paragraph (a) by removing the phrase "books, records, documents," and inserting in its place "records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form,";

—in paragraph (b) introductory text and the first sentence of (b)(2) by removing the word "documents" and inserting in its place "records";

—and revising paragraph (c) to read as follows:

4.703 Policy.

* * * * *

(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

* * * * *

PART 14—SEALED BIDDING

4. Section 14.201–7 is amended by revising paragraph (a), to read as follows:

14.201–7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–26, Audit and Records—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.804–2(a)(1) for submission of cost or pricing data.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. Section 15.106–1 is removed and 15.106–2 is redesignated as 15.106–1 and revised to read as follows:

15.106–1 Audit and Records—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except those (1) not exceeding the simplified acquisition threshold in 48 CFR part 13; or (2) for commercial items under the conditions in 15.106–2; or (3) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, use the clause with its Alternate III.

6. Section 15.805–5 is amended in paragraph (a)(1) introductory text by inserting a new second and third sentence to read as follows:

15.805–5 Field pricing support.

(a)(1) * * * No preaward audit shall be performed to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into, in which the contracting officer determines that the objectives of the audit can be reasonably met by accepting the results of an audit conducted by any department or agency within one year preceding the date of the contracting officer's determination. The contracting officer should contact the cognizant audit office to determine the existence of audits addressing proposed indirect costs, and shall denote such determinations in field audit requests. * * *

* * * * *

PART 25—FOREIGN ACQUISITION

7. Section 25.000 is amended by revising the last sentence to read as follows:

25.000 Scope of part.

* * * This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, the clause at 52.215–2, Audit and Records—Negotiation, and use of local currency for payment.

8. Section 25.901 is amended by revising paragraphs (b), (c), (d)(2), (d)(3), and (d)(5) to read as follows:

25.901 Omission of examination of records clause.

* * * * *

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.106–1(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the basic clause at 52.215–2, Audit and Records—Negotiation, which authorizes examination of records by the Comptroller General. Use of the clause with Alternate III should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for use of Alternate III.* The contracting officer may use the clause at 52.215–2, Audit and Records—Negotiation, with its Alternate III in contracts with foreign contractors—

(1) If the agency head or designee determines, with the concurrence of the Comptroller General, that waiver of the right to examination of records by the Comptroller General will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records, as defined at 4.703(a), available for examination, and the agency head determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) * * *

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

* * * * *

(5) Determine that it will serve the interest of the United States to use the clause with its Alternate III.

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

50.307 [Amended]

9. Section 50.307 is amended in paragraph (b) by removing "52.215–1, Examination of Records by Comptroller General" and inserting in its place "52.215–2, Audit and Records—Negotiation".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.214–26 is revised to read as follows:

52.214–26 Audit and Records—Sealed Bidding.

As prescribed in 14.201–7(a), insert the following clause:

Audit and Records—Sealed Bidding (Date)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The development of the proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification, that the Contracting Officer or an authorized representative of the Contracting Officer considers useful in the evaluation of the accuracy, completeness, and currency of the certified cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative shall have the same rights.

(c) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this section, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(d) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (d), in all subcontracts expected to exceed the threshold in FAR 15.804–2(a)(1) for submission of cost or pricing data.

(End of clause)

52.215–1 [Reserved]

11. Section 52.215–1 is removed and reserved.

12. Section 52.215–2 is revised to read as follows:

52.215–2 Audit and Records—Negotiation.

As prescribed in 15.106(1)(b), insert the following clause:

Audit and Records—Negotiation (Date)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all records and other evidence which reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract, or which may contain information useful in the evaluation of the allowability of such costs. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The development of the proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification, that the Contracting Officer or an authorized representative of the Contracting Officer considers useful in the evaluation of the accuracy, completeness, and currency of the certified cost or pricing data.

(d) *Comptroller General*—(1) The Comptroller General of the United States, or a duly authorized representative of the Comptroller General, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or subcontract.

(2) This paragraph may not be construed to require the Contractor or Subcontractor to create or maintain any record that the Contractor or Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this section, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in (e) altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract. Subcontracts not exceeding the simplified acquisition threshold in Part 13 are exempt from this flowdown requirement

(End of clause)

Alternate I (Date). As prescribed in 15.106–1(b), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and

charges for the use of, the facilities under this contract.

Alternate II (Date). As prescribed in 15.106–1(b), in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A–133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this contract.

Alternate III (Date). As prescribed in 15.106–1(b), delete paragraph (d) of the basic clause and renumber the remaining paragraphs accordingly.

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Part III

Environmental Protection Agency

Federal Radiation Protection Guidance for Exposure of the General Public; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5126-7]

RIN 2060-AE61

Federal Radiation Protection Guidance for Exposure of the General Public

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed recommendations, request for written comments, and notice of public hearings.

SUMMARY: The Agency is proposing to make recommendations to the President for new guidance to Federal agencies on radiation protection which would have two effects: it would cause a five-fold reduction in the maximum allowable risk of cancer from any Federally regulated activity involving nuclear materials or other sources of radiation; and it would decrease the cost of Federal regulation of radiation by promoting uniform treatment of radiation by all Federal agencies, and reducing costly duplicative and conflicting requirements.

The new guidance would replace those portions of previous recommendations that apply to protection of the general public, approved by Presidents Eisenhower and Kennedy in 1960 and 1961, respectively. New Federal guidance issued in 1987 replaced those portions of the 1960 and 1961 guidance that applied to protection of workers.

These proposed recommendations are based on a review of existing guidance in light of current scientific understanding of the risks of exposure to ionizing radiation and of the experience of Federal agencies in its control. They include both qualitative guidance on radiation protection and numerical guides for limiting radiation doses to the general public. The most significant proposed changes are that: the Radiation Protection Guide (RPG) be expressed in terms of a single weighted sum of doses to organs, and the separate RPGs for individual organs deleted; the current RPGs limiting the average genetic dose to members of the U.S. population to 5 rems in 30 years and the annual whole body dose to 500 millirem dose equivalent be replaced by a single RPG of 1 millisievert (100 millirem) effective dose equivalent received by or committed in a single year to any individual from all sources combined; doses from individual sources normally be limited to a fraction of the RPG; and increased emphasis be given to the principle that all exposure should be maintained as low as reasonably achievable, within the RPG.

The Agency invites written comments on these proposals and shall also hold a public hearing, as discussed below. All written and oral comments will be considered carefully in preparing our final recommendations to the President.

DATES: Written comments in response to this notice of proposed guidance must be received on or before February 21, 1995, to be ensured full consideration. A public hearing will be held in Washington, D.C., on February 22 and 23, 1995. Requests to participate should be received on or before January 23, 1995. The schedule, location, and procedures for this hearing will be published in the **Federal Register** shortly.

ADDRESSES: Written comments (in duplicate if possible) should be submitted to: Central Docket Section Section (6102), Attn.: Docket No. A-83-41, U.S. Environmental Protection Agency, Washington, DC 20460. Written comments, the public hearing record, and other documents related to this rulemaking will be filed under the above docket number in Room M1500 at Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

Requests to participate in the public hearing should be submitted to Allan C. B. Richardson, Deputy Director for Federal Guidance, Criteria and Standards Division, Office of Radiation and Indoor Air (6602J), U.S. Environmental Protection Agency, Washington, D.C. 20460. Requests to participate in the public hearing should include an outline of the topics to be addressed, the amount of time requested, and the names of the participants. EPA may allow testimony to be given at the hearing without prior notice, subject to time constraints at the discretion of the hearing officer.

FOR FURTHER INFORMATION CONTACT: Allan Richardson at the above address (telephone (202) 233-9213; FAX (202) 233-9629) concerning these proposed recommendations or the public hearing.

SUPPLEMENTARY INFORMATION:

Introduction

The Administrator of the Environmental Protection Agency (EPA) has the responsibility to "...advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." This authority stems from Executive Order 10831; the Atomic Energy Act of 1954, as amended; and Reorganization Plan No. 3 of 1970. Guidance to Federal agencies has historically consisted of both qualitative and quantitative recommendations expressed as "Federal Radiation Protection Guidance." The guidance proposed here would replace those portions of existing Federal Radiation Protection Guidance, adopted in 1960 (25 FR 4402) and 1961 (26 FR 9057), that apply to protection of the general public.

The purpose of Federal guidance is to provide a common framework to help ensure that the regulation of exposure to ionizing radiation is carried out by Federal agencies in a consistent and adequately protective manner. Although the individual Federal agencies have determined, and will continue to determine, the details of specific regulations, it is intended that they adhere to these proposed recommendations as basic, minimum requirements. It should be recognized, however, that in some situations application of these recommendations may be superseded by specific statutory requirements.

These proposed recommendations have been developed by EPA in cooperation with the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, and Transportation; the National Aeronautics and Space Administration; and the Nuclear Regulatory Commission. In addition, the Conference of Radiation Control Program Directors of the States contributed to the development of this proposal. This cooperation was carried out through an extensive series of interagency meetings carried out between 1986 and 1992, and agency reviews conducted in 1993.

Previous Relevant Actions by the FRC and EPA

On May 13, 1960, President Eisenhower approved the first recommendations of the former Federal Radiation Council (FRC) for guidance to Federal agencies on the protection of workers and the general public from radiation (25 FR 4402). This guidance was extended by further recommendations approved by President Kennedy on September 26, 1961 (25 FR 9057).

Following a lengthy review by Federal agencies of those portions of the 1960 and 1961 guidance that applied to

occupational exposure the Administrator of EPA made new recommendations for protection of workers which were approved by President Reagan on January 27, 1987 (52 FR 2822). Those recommendations motivated a number of the changes now proposed here for protection of the general public.

During the period since the current guidance was issued, EPA, alone and in concert with other Federal agencies, has sponsored major reviews of the health risks from exposure to low level ionizing radiation by the Committee on the Biological Effects of Ionizing Radiation (BEIR), National Academy of Sciences—National Research Council. These reviews, which were published in 1972, 1980, 1988, and 1990, each incorporated new scientific information that had become available since the preceding review and contributed directly to the deliberations which have resulted in these proposed recommendations.

Scope of the Proposed Guidance

These recommendations would apply to most exposure of the general public to sources of ionizing radiation that are created or influenced by human activities, the principal exceptions being exposure of workers, of patients for medical purposes in the practice of the healing arts, and of the general public from accidents. They would apply, for example, to exposure of members of the general public due to: (a) emissions of radioactive materials or radiation from industrial, defense-related, and scientific operations; (b) use of radiation and radionuclides in consumer products and medicine (except for beneficial exposure of patients); (c) mining and processing of ores that contain naturally-occurring radioactive materials; (d) disposal of wastes generated by any of the above operations; and (e) transportation of radioactive materials involved in any of the above operations.

Specific examples include, but are not limited to: nuclear installations, including mines, mills, and processors of uranium and thorium, nuclear fuel fabrication plants, nuclear reactors (nuclear power plants, critical and subcritical facilities, and research reactors), spent fuel storage and processing facilities, and weapons production, testing, and storage facilities; x-ray generators and radioactive sources; irradiation installations, such as particle accelerators and large irradiators for teletherapy, radiosterilization, and commercial product irradiation; inspection devices in airports; consumer products such as static electricity elimination devices, ion generating tubes, smoke detectors, and devices for producing light or an ionized atmosphere, such as for dials and laboratory measurements; and radioactive waste installations where radioactive wastes are handled, treated and conditioned, temporarily stored, or permanently disposed of.

These proposed recommendations also address most terrestrial sources of exposure arising from human activities (these principally involve naturally-occurring radioactive materials), but *not* exposure due solely to background radiation or due to globally-dispersed effects of past activities and accidents. Excluded, for example, is consideration of variations in exposure which result from geographic location, as well as the small annual dose increment from past weapons tests and residual global contributions of past nuclear accidents, like that at Chernobyl in 1986, because it is not practicable to contemplate their control. For the purpose of these recommendations, "background radiation" includes radiation of cosmic and solar origin at the surface of the earth and radiation from naturally-occurring primordial and cosmogonic radionuclides found in the earth's crust or produced in the upper atmosphere by cosmic or solar radiation (including radioactivity normally ingested in food and water) that is not enhanced by human activities.

By technological means, however, exposure to naturally-occurring radionuclides that might otherwise be considered sources of "natural background" may be enhanced. Technologically-enhanced exposure to natural radiation may be defined as exposure to natural sources of radiation which is increased by (or would not occur without) a human activity. Examples of such sources include radon and its progeny accumulated in buildings; wastes from mineral ores, including ores which are mined for uses or purposes other than for their radioactive isotopes; wastes and/or emissions from the burning of coal, oil, and natural gas; ion exchange resins and sludge from drinking water treatment; scale in oil- and gas-field piping; articles made from naturally-occurring radioactive materials, such as thorium in lantern mantles and in certain optical glasses, and uranium in certain ceramic glazes; and cosmic rays experienced during high altitude airplane flights.

To the extent that exposure to such sources is controllable, they are addressed by these recommendations. However, the guidance does not recommend that all situations that could lead to increased exposure should necessarily be regulated. For example, there is no readily applicable means to reduce the small increase in radiation exposure while in flight. In addition, it would require many circumnavigations of the globe by airline on non-business matters to approach the recommended limit for dose to individuals. Similarly, we believe it is also not appropriate to regulate, for example, exploration of caves, mountain climbing, or residence in high altitude locations because of technologically-enhanced radiation. Decisions on what exposures are appropriate candidates for reduction through regulation have been and will continue to be based on legislative mandates and decisions by regulatory agencies.

The largest single source of exposure of the general public is radon. Radon, a naturally-occurring radioactive gas, can accumulate in any structure that limits the free exchange of indoor and outdoor air. There are two general categories of sources that can generate significant amounts of radon within a building: radium-bearing soil or rocks naturally situated beneath or near the building and radium-bearing materials used in construction or as fill beneath or near the building. Although exposure to radon from sources of the first kind may be enhanced or reduced by building location, design, or construction, these factors usually are not subject to direct Federal or State control. Exposure to the second category of sources (radium-bearing materials placed in or near a building) may be subject to direct regulatory control or alleviation through Federal or State programs.

The numerical limits for individual dose proposed in this guidance do not include the contribution from indoor radon produced by either of the above categories of sources. EPA and the Centers for Disease Control have provided separate advice to the public for protection against exposure to indoor radon in A Citizen's Guide To Radon (EPA document 402–K92–001, May 1992, and subsequent editions) and EPA has published a series of other technical publications, pursuant to Pub. L. 100–551 (Oct. 28, 1988, 102 Stat. 2755, amending the Toxic Substances Control Act, 15 U.S.C. §§ 2601–2692). That advice is consistent with this proposed guidance, where applicable.

Finally, these recommendations apply only to the management of normal operations of facilities and devices that may expose members of the public to radiation: that is, to controllable exposure to radiation and releases of radionuclides that may expose the general public. Normal operations

include both those conditions that are expected to occur with certainty as well as those that may be predicted to occur with a reasonably large probability (e.g. anticipated operational occurrences at nuclear reactors), but not conditions with a very low probability of occurrence, such as the unintended re-entry of a satellite containing radioactive materials. These recommendations also do not apply to nuclear incidents, such as a major accident at a nuclear facility or the result of terrorist activity, or to exposure resulting from acts of war. Guidance for establishing radiological emergency response plans and for making radiation protection decisions during nuclear incidents has been provided by EPA in the Manual of Protective Action Guides and Protective Actions for Nuclear Incidents (EPA–520/1–75–001–A), pursuant to regulations issued by the Federal Emergency Management Agency (47 FR 10758, March 11, 1982). Additional guidance has been provided by the Food and Drug Administration on the prophylactic use of potassium iodide during radiological emergencies (47 FR 28158, June 29, 1982) and on the use of food and animal feed contaminated by an incident (47 FR 47073, October 22, 1982, and, jointly with the Department of Agriculture, 51 FR 23155, June 25, 1986).

Exposure to radiation as a medical patient, which may occur for diagnostic or for therapeutic purposes, is not covered by these recommendations. Recommendations of the Administrator of EPA and the Assistant Secretary for Health of the former Department of Health, Education, and Welfare concerning diagnostic use of radiation, approved by President Carter in 1978, are provided in Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays (43 FR 4377). Additional specific recommendations and guidance on patient selection, evaluation of radiation exposure, quality assurance, and related topics have been published by the Department of Health and Human Services. However, decisions on the diagnostic or therapeutic use of radiation are the responsibility of individual patients and their physicians, and such decisions should be based on the benefits and risks of the use of radiation for the conditions specific to each patient. Since those decisions will involve considerations quite different from those addressed here—exposure of the general public to a variety of sources of general societal benefit—these recommendations do not apply to exposure of patients.

These recommendations also do not apply to occupational exposure. Federal agencies should normally regulate or manage the exposure of workers in accordance with Radiation Protection Guidance to Federal Agencies for Occupational Exposure (52 FR 2822), approved by President Reagan in 1987.[1] However, when workers can be exposed under conditions that also apply to members of the public (e.g., when the public has unlimited access to the work site), the source of such exposure should be controlled in conformance with these proposed recommendations for protection of the general public.

The Need for Revision of the 1960 Guidance

Since the current guidance was issued in 1960, knowledge of the effects of ionizing radiation on humans has increased substantially. The BEIR Committee of the National Academy of Sciences—National Research Council conducted major reviews of the scientific data on health risks of low levels of ionizing radiation in 1972 and again in 1980.[2] Portions of the information presented in the latter report were expanded in a 1988 publication on risks from exposure to alpha radiation.[3] A comprehensive, major new review was completed in 1990.[4] Similar reviews have been published by the United Nations Scientific Committee on the Effects of Atomic Radiation in 1977, 1982, 1986, and 1988.[5] The most important results from these reviews, carried out over a period of more than two decades, are that, although estimates of the nature and general magnitude of the risks from radiation have not undergone fundamental revision, estimates of the principal risk, that of cancer, have increased roughly threefold and have become more certain.

While our knowledge of the effects of radiation has become more definitive, the extent of our use of radiation has increased and our policies for regulating it have evolved. Prior to 1960, major uses of radiation were limited, and the primary concern of radiation protection was to ensure that doses to those few individuals that were affected did not exceed limits on dose from all sources combined. Since then, the numbers and types of man-made radiation sources have greatly increased, and, at the same time, public concern about environmental contaminants of all kinds has become an important influence in their management. Of particular significance is that the focus of the many environmental policies and laws that have emerged during the past two decades has been more on improving the levels of control of individual sources of contamination than on establishing a single acceptable level of risk to individuals from all sources combined. This shift of concern has led to the development of new concepts for determining the appropriate level of control of specific kinds of sources. For radiation sources, it has meant that attention has been focused on assessing the potential impact of each source, or class of similar sources, on populations and on the capabilities and costs of controls to reduce that impact. The result has been the promulgation of a series of regulatory requirements that are based on the specific characteristics of particular classes of sources of public exposure to radiation. These requirements invariably have been more restrictive than those required to meet the existing Federal guidance on dose to individuals from all sources combined.

Concurrent with the improved understanding of the effects of ionizing radiation and the evolution of its regulation, international and national advisory groups have refined and revised their basic recommendations on radiation protection. In 1977, the International Commission on Radiological Protection (ICRP) published revised recommendations[6] that have since been adopted, in whole or substantial part, in most developed countries. In 1990, the ICRP issued revised general recommendations[7] that, for control of exposure of the general public, expanded on those issued in 1977, notably in the areas of policy for

[1] In some situations the distinction between members of the public and workers will have to be carefully considered. A useful test for determining whether individuals should be considered workers or members of the public is whether or not their presence in the exposure situation in question is within the scope of their employment.

[2] *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation*, National Academy of Sciences, Washington, D.C., 1972; *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation: 1980*, National Academy Press, Washington, D.C., 1980.

[3] *The Health Risks of Radon and Other Internally Deposited Alpha-Emitters*, National Academy Press, Washington, D.C., 1988.

[4] *Health Effects of Exposure to Low Levels of Ionizing Radiation*, National Academy Press, Washington, D.C., 1990.

[5] *Sources and Effects of Ionizing Radiation*, United Nations, New York, 1977; *Ionizing Radiation: Sources and Biological Effects*, United Nations, New York, 1982; *Genetic and Somatic Effects of Ionizing Radiation*, United Nations, New York, 1986; *Sources, Effects, and Risks of Ionizing Radiation*, United Nations, New York, 1988.

[6] *Recommendations of the International Commission on Radiological Protection*, ICRP Publication 26, Pergamon Press, Oxford, 1977.

[7] *1990 Recommendations of the International Commission on Radiological Protection*, ICRP Publication 60, Pergamon Press, Oxford, 1991.

control of individual sources and the methodology for expressing doses and risks from radiation. National bodies have also contributed to the evolution of radiation protection practice. In the U.S., the most recent (1993) recommendations of the National Council on Radiation Protection and Measurements (NCRP)[8] are, in most cases, consistent with those of the ICRP. The changes in the recommendations of these organizations reflect the improved understanding of effects on health of ionizing radiation, new methodologies for evaluating doses and risks from ionizing radiation, developing public policy on acceptable levels of risk, and refinements in the application of basic radiation protection principles to the regulation of individual sources of exposure of members of the public.

All of the above developments—improved estimates of radiation risk, experience in regulating the constantly expanding complex of applications of ionizing radiation, and the evolution of improved basic concepts and methodology for radiation protection—have contributed to the need for this proposed revision of the 1960 guidance.

Effects of Radiation on Human Health

Effects on human health of concern from exposure to low levels of ionizing radiation may be divided into three categories.[9] The first of these encompasses all forms of cancer (including leukemias). Cancers associated with radiation are not distinguishable from those associated with other causes. Although radiogenic cancers are observed in humans over a range of higher doses,[10] it is necessary to infer the risk of cancer at the exposure levels normally encountered by members of the public because there is insufficient information to draw direct conclusions based on observations of cancer at these levels.

The second category encompasses hereditary effects (mutations) induced in the reproductive cells of exposed individuals and transmitted to their descendants. The severity of hereditary effects ranges from inconsequential to debilitating or fatal. Although such effects are observed in studies of animals at high doses, excess hereditary effects have not yet been confirmed in epidemiological studies of the descendants of exposed human populations.

Both cancer and hereditary effects are postulated to be caused by "stochastic" (i.e. random) direct or indirect interactions of ionizing radiation with the genetic materials in living cells. In view of the extensive, albeit incomplete, scientific evidence supporting this view, including much theoretical and experimental radiobiology, it is commonly assumed that at low levels of exposure the probability of incurring either cancer or most serious hereditary effects increases linearly with dose, without a threshold. The severity of such effects is not believed to be related to the amount of dose received. That is, it is the probability of occurrence of a cancer or an hereditary effect, not its severity once it has been induced, that is assumed to be dependent upon the size of the dose.

The risks to health from exposure to low levels of ionizing radiation have been reviewed by the National Academy of Sciences, as noted earlier, in a series of reports published between 1972 and 1990. Regarding cancer, there continues to be divided opinion on how to interpolate between the absence of radiogenic cancers at zero dose and the observed effects of radiation (mostly at higher doses than those normally encountered) to estimate the most probable effects of the doses actually encountered by members of the public.[11] A preponderance of scientists believe that the available data best support the use of a linear model for estimating the effect of such doses. Some scientists, however, believe that other models provide better estimates. These differences of opinion have not been totally resolved by studies of the effects of radiation in humans, the most important of which are those of the Hiroshima and Nagasaki atom bomb survivors. Over the last decade an extensive reevaluation of the doses and effects in these survivors has been carried out. With respect to cancer, this reevaluation has strengthened the evidence for use of the linear model at doses near background levels.

These studies have also resulted in increased estimates (roughly threefold between 1972 and 1990) of the most probable risk of cancer from environmental levels of radiation. Nonetheless, the estimated number of health effects induced by incremental doses of radiation comparable to natural background levels remains small enough, relative to the number that already occur from other causes, that in all likelihood it will never be possible to detect them in human epidemiological studies. This lack of detectability does not mean, however, that such effects on health do not occur. In the absence of reliable evidence to the contrary, the Agency believes that it is appropriate, for radiation protection purposes, to assume that at and just above the level of natural background the risk of cancer and most serious hereditary effects increases linearly with increasing dose, without a threshold. That is, we assume that any increase in exposure to ionizing radiation carries the potential for causing harm to health. This assumption has been employed in the development of this guidance, and is consistent with current as well as historical practice for radiation protection world-wide.

The third category of health effects involves those exposed *in utero*. It has long been believed that the unborn are more sensitive than are adults to the induction of cancer by radiation. The unborn are also subject to various radiation-induced physical malformations.[12] Recent studies, however, have drawn renewed attention to the apparently greater risk of severe mental retardation from exposure of the unborn. These studies indicate that the sensitivity of the fetus is greatest during the period from 8 weeks to 15 weeks after conception, and continues at a lower level during the period 16 to 25 weeks.[4] The risk of less severe mental retardation—manifested as a lowered Intelligence Quotient—is similarly elevated during these periods. Although it is not clear to what extent the occurrence and degree of retardation are proportional to the dose (or whether there is a threshold dose for these effects), it is prudent to assume, for regulatory purposes, that there is a linear, non-threshold relationship

[8] *Limitation of Exposure to Ionizing Radiation*, NCRP Report No. 116, National Council on Radiation Protection and Measurements, Bethesda, MD, 1993.

[9] A fourth category of effects, designated "non-stochastic," occurs at dose levels higher than those addressed by these recommendations. They are of importance for managing the response to nuclear accidents (see EPA-520/1-75-001-A, op. cit.).

[10] We use the general term "dose" to mean the dose equivalent, effective dose equivalent, committed dose equivalent, or committed effective dose equivalent, with the precise meaning to be inferred from the text. When precision is important, we use the full term. In 1990 the International Commission on Radiological Protection adopted new terminology (and definitions) for these quantities: equivalent dose in place of dose equivalent, and effective dose in place of effective dose equivalent. Although these terms are simpler and are acceptable for use, we use the older, more explicit terms.

[11] The risk of interest is not that at or near zero dose, but that due to small increments of dose above the pre-existing background level. Background in the U.S. is typically about 3 mSv (300 mrem) effective dose equivalent in a year, or 0.2 Sv (20 rem) in a lifetime. Approximately two thirds of this dose is due to radon, and the balance comes from cosmic, terrestrial, and internal sources of exposure.

[12] These include small head circumference (microcephaly), brain size (microencephaly), eye malformations, and intrauterine growth retardation.

between these effects and the dose delivered to the fetus during these periods.

For radiation protection purposes EPA assumes, using a linear, non-threshold model, an estimated risk to an average member of the U.S. population of 5×10^{-2} fatal cancers per sievert[13] (5×10^{-4} fatal cancers per rem) delivered at low dose rates.[14] (That is, we estimate that if 100,000 people chosen at random from the U.S. population were each given a uniform dose of 1 mSv (0.1 rem) to the entire body at a low rate of exposure, five cases of fatal cancer, on average, would occur during their remaining lifetimes, in addition to the roughly 20,000 cases that normally would occur from other causes.) The risk of inducing severe hereditary effects in their offspring is estimated to be smaller than that for cancer, namely, on the order of 10^{-2} per sievert (10^{-4} effects per rem).[15] The risk of severe mental retardation from doses to a fetus is estimated to be greater per unit dose than the risk of cancer in the general population—5×10^{-1} per sievert (5×10^{-3} per rem)[16]—but the period of susceptibility is very much shorter.

The National Academy of Sciences has judged the 90% confidence limits for their most recent estimates of the risk of cancer to be about a factor of three greater and a factor of two less than their estimate of the most probable value. They also observe that, at the low doses and dose rates of concern in this guidance, the possibility that there may be no risk cannot be ruled out, since epidemiological data cannot rigorously exclude the existence of a threshold. The numerical values of risks of genetic abnormalities and mental retardation are somewhat less well established. In spite of uncertainties in the data and its analysis, however, estimates of the risks from exposure to low levels of ionizing radiation are better characterized than those for virtually any other environmental carcinogen.

Basic Principles

In recommending the 1960 Federal guidance, the Federal Radiation Council said: "Fundamentally, setting basic radiation protection standards involves passing judgment on the extent of the possible health hazard society is willing to accept in order to realize the known benefits of radiation" (25 FR 4402). The need to make this judgment led to three basic principles that have governed radiation protection for many decades in the United States and in most other countries. Although the precise formulation of these principles has evolved over the years, their intent has remained essentially unchanged.

The first principle is that any activity involving the exposure of people to ionizing radiation should be sufficiently beneficial to society to warrant the exposure; i.e., a finding should be made that an activity causing exposure is "justified."

The second is that, for justified activities, exposure of people should be "as low as reasonably achievable." This principle commonly has been designated by the acronym "ALARA" in the United States, and is called "optimization" of radiation protection in international practice.

The third is that, even for justified and optimized exposures, the maximum dose to any individual should be limited so as not to exceed an acceptable level of risk. This is referred to as "limitation."

The objective of the first two principles is to minimize (consistent with benefits and costs) the estimated total harm (i.e. health detriment) in the entire population from each source of exposure; they do not, however, limit the way that harm is distributed among individuals. They are, in this sense, "source-related" radiation protection requirements. The purpose of the third principle, that of limitation of the maximum allowed dose, is to provide an upper bound on risk to individuals. This principle, which is an "individual-related" requirement, may be carried out in two ways: first, through limitation of the potential dose from all sources of exposure combined, and second, through additional more specific limitations on the doses from individual sources.

The following seven proposed recommendations directly express, expand upon, and implement these three basic principles in light of current improved knowledge of the risks of radiation and of the variety and extent of uses of radiation. In particular, they reflect lower upper limits on dose to individuals from all sources combined, they make explicit the need for further limitation of doses from individual (or classes of) sources of exposure that is more restrictive than that for all sources combined, and they introduce improved methods for assuring that all of the various components of risk associated with radiation exposure are accounted for in radiation protection requirements for limiting exposure of the public.

Recommendation 1

There should be no exposure of the general public to ionizing radiation unless it is justified by the expectation of an overall benefit from the activity causing the exposure. Justified activities may be allowed, provided exposure of the general public is limited in accordance with these recommendations.

The principle that activities causing exposure of the general public should produce a net societal benefit has long formed a cornerstone of radiation protection policy, even though the judgment of net benefit is not easily made. The 1960 Federal guidance states: "There should not be any man-made radiation exposure without the expectation of benefit resulting from such exposure* * *," and "It is basic that exposure to radiation should result from a real determination of its necessity."

Other advisory bodies have used language which has essentially the same meaning. In its 1990 revision of international guidance, the ICRP said "* * *no practice* * *should be adopted unless it produces sufficient benefit to the exposed individuals or society to offset the radiation detriment it causes." When it addressed this issue in 1975, the NCRP said, "* * *all exposures should be kept to a practicable minimum; * * *this principle involves value judgments based upon perception of compensatory benefits commensurate with risks, preferably in the form of realistic numerical estimates of both benefits and risks from activities involving radiation and alternative means to the same benefits."[17]

These recommendations would continue the requirement for justification in terms of an overall benefit. An obvious problem in making this judgment is the difficulty of

[13] The traditional special unit for dose equivalent has been the rem. The special unit sievert (Sv) in the International System of Units, adopted in 1979 by the General Conference on Weights and Measures, is now in general use throughout the world. The RPGs recommended here may be expressed in either of these units. One sievert is equal to 100 rem. The prefix "milli" (m) means one thousandth.

[14] "Low dose rates" here means dose rates on the order of or less than those from background radiation (see footnote 11). This value for the risk from such doses incorporates a dose rate effectiveness factor of two.

[15] The risk of severe hereditary effects in the first two generations, for exposure of the reproductive part of the population, is estimated to be 5×10^{-3} per Sv (5×10^{-5} per rem). For all generations the risk is estimated to be 1.2×10^{-2} per Sv (1.2×10^{-4} per rem). For exposure of the entire population, which includes individuals past the age of normal child-bearing, each estimate is reduced to 40% of the cited value.

[16] The risk for mental retardation during the 8th through 15th week [estimated to be 4×10^{-1} per Sv (4×10^{-3} per rem)] plus the risk during the 16th through 25th week [estimated to be 10^{-1} per Sv (10^{-3} per rem)].

[17] *Review of the Current State of Radiation Protection Philosophy*, NCRP Report No. 43, National Council on Radiation Protection and Measurements, Bethesda, MD, 1975.

assessing, in comparable terms, costs (including risks) and benefits. Given this situation, informed value judgments may be necessary, and, in fact, are usually all that is possible.

The determination that a particular activity involving exposure of the general public is justified is often a complex process. Commonly, it is not made by those directly responsible for radiation protection decisions. For a few activities, like the x-ray examination of feet for shoe-fitting practiced many years ago, agreement that there is not a net benefit was easy to achieve. The decision was simplified in that example because the risks and benefits accrued to the same individuals. This is usually not the case. In extreme cases the determination can be far more complex. For a major industrial application of radiation, for example, the determination may involve not only the benefits and the costs (direct, health, and environmental) of construction, operation, waste disposal, accidents, and eventual decommissioning, but also the tradeoffs between the activity and the economic, societal, environmental, and resource implications of alternative means to achieve the same result.

In any case, for a major activity the analysis should make a reasonable demonstration that the benefit associated with the proposed activity clearly outweighs the risks associated with the use of ionizing radiation, including those associated with normal operations, reasonably possible incorrect operation or management, and disposal of wastes over the life cycle of the activity. When the consequences can be significant, the analysis should include low probability events and exposure pathways.

The process of balancing these factors may eventually involve congressional, executive, and judicial inputs. One vehicle for assisting such decision-making is the National Environmental Policy Act of 1969 which, in effect, requires Federal agencies to assess and consider the above factors for any major Federal action that could significantly affect the quality of the human environment. Others include the regulatory analysis process pursued by Federal agencies (Executive Order 12866; 58 FR 51735, October 4, 1993), and decision processes of public and professional bodies, such as public utility commissions and professional medical groups. However, in making these recommendations EPA does not propose to specify how or by whom justification should be determined, but simply that the detrimental effects of radiation, as well as other detrimental effects, should be considered along with the benefits in any situation where an initial decision is being made that involves significant exposure of the general public to radiation.

Recommendation 2

A sustained effort should be made to ensure that doses to individuals and to populations are maintained as low as reasonably achievable.

The idea that exposure to radiation should be kept to a practical minimum became a basic requirement in radiation protection early in the century, shortly after the recognition that harm from radiation is not limited to the skin damage that occurs at relatively high doses. The concept was first applied to exposure of individual workers, primarily in medical and research applications, since early uses of radiation did not involve large populations. Later, after the commencement of nuclear weapons testing and introduction of the widespread use of nuclear power, it was applied to the exposure of populations—first to safeguard the genetic pool and, later, after the assumption that cancer induction is a stochastic process became accepted as a prudent premise, also to reduce the presumed incidence of cancer. The requirement is now taken to be the logical and necessary consequence of the assumption of a linear relationship between exposure to radiation and the risks of cancer and hereditary effects at the dose levels addressed by these recommendations.

The phrase "as low as reasonably achievable" (ALARA) is used to designate a general principle that exposure to radiation should be controlled so as to achieve the lowest level reasonably attainable. The 1960 FRC guidance applied the concept to keeping dose to the *individual* as low as practicable, and expressed it as a responsibility to be carried out by the user of radiation. In these proposed recommendations the ALARA principle is broadened to apply to collective doses in *populations* as well, and in this broader application serves as a principal basis for the implementation of ALARA through regulatory practice. This use of the ALARA principle is customarily designated "optimization" of radiation protection. Optimization may be carried out through regulatory determinations for whole classes of similar sources, as in the establishment of standards for environmental releases from nuclear power facilities, or, more directly, in the determination of operating requirements for a specific facility. Depending on the nature of the source, optimization may involve use of simple or complex decision tools for balancing public health and economic concerns to determine the optimal level of control. The basic elements required for optimization are the values placed on avoiding the estimated health detriments and the direct costs of control, as a function of various levels of protection. In reaching a final optimization determination, however, a variety of other economic and societal factors may also have to be considered, such as the distribution of health detriment over populations and over time, and the technical feasibility and overall economic impact of controls. In rare cases, the optimization process could result in the need to make tradeoffs between larger doses to a few individuals (within the limits specified in Recommendations 3 and 4) and many small doses in large populations.

At the dose levels involved in the comparison of alternatives for determining ALARA levels, linearity is assumed, and effects on public health may be estimated from the collective dose in populations. In cases where it is necessary to estimate the total public health detriment from long-lived radionuclides, collective dose will often have to be projected into the future, or in distant populations. Regulatory decisions on ALARA levels should take into account such projections when their contribution is both a significant part of the total collective dose from the activity under examination and its uncertainty is not large compared to the differences in collective dose among the alternatives being examined. In some cases, it may be appropriate to estimate effects on public health as a function of time or distance, and to take their distribution in time or distance into account in decisionmaking. However, it will never be appropriate to apply an arbitrary cutoff to such projections based solely on the level of dose to individuals, or on the distance from the source or in time; such cutoffs would have the effect of preempting the decision-making process before the magnitude and distribution of the avoidable impact on health has been estimated.

In some situations, a decision to refrain from applying controls may be the appropriate outcome of an ALARA determination. Such a finding for an individual practice, or for a group of practices meeting specified requirements, may be used as one criterion for exemption from regulatory control. However, in addition to a finding that the total health detriment in populations is not large enough to justify control, it is also necessary to ensure that individual exposures are

sufficiently small, in view of the stipulations of Recommendation 4, not to warrant regulation. Exemptions that satisfy each of these criteria would be consistent with these proposed recommendations.

Although the ALARA principle is relevant to a wide variety of radiation protection activities, these tend to fall into two general categories. The first is that emphasized above, the establishment of regulatory levels of control over individual sources or categories of sources by Federal (or State) agencies. The second, and equally important, is making management decisions in day-to-day operations at facilities where ionizing radiation or radioactive materials are present. The selection of regulatory limits for facilities, as well as the day-to-day management of sources, in a manner consistent with the ALARA principle are discussed further in connection with Recommendation 4.

Recommendation 3

The preceding recommendations address the need for justification and optimization of activities that involve exposure of the general public. The third basic radiation principle, limitation of maximum dose to individuals, is addressed by the next two recommendations. Recommendation 3 limits the sum of doses to any individual from all radiation sources combined, through the Radiation Protection Guide (RPG) for the general public; and Recommendation 4 addresses limitation of doses from individual sources, through the establishment of source-specific authorized limits.

The RPGs established in 1960 and 1961 consist of separate limits on dose to the whole body and bone marrow (0.5 rem in a year, each), the thyroid and bone [18] (1.5 rem in a year, each), and the gonads (5 rem over 30 years, average in the U.S. population). Those recommendations (except that for the gonads) were based on the concept of limiting the dose to the most critically exposed organ of the body.[19] That is, it was assumed that if dose to the critical organ was limited to an acceptable level, then doses to other parts of the body would also be acceptably low. One consequence of this approach is that exposure of the body to external sources of radiation and exposure to internal radioactivity are addressed by separate limits, and therefore the risks from such exposures can be additive. Further, when several different organs are exposed to internal radiation simultaneously, only the part of the body receiving the highest dose relative to its RPG is decisive for limiting the dose. That is, the risks associated with exposure of other parts of the body are not considered in applying a dose limit based on the critical organ approach. The 1960 limit for dose to the gonads was based on an entirely different consideration, that of limiting the incremental rate of mutation in the entire genetic pool of the U.S. population. The incremental level of mutation deemed unacceptable was on the order of a few per cent.

These recommendations would replace the system described above with the risk-weighted dose limitation system introduced by the ICRP in 1977[6]. The ICRP system takes into account the individual contribution of each exposed part of the body to total risk. It does so by assigning to each organ or tissue of the body a weighting factor that is proportional to the risk per unit dose of inducing cancer or, for the reproductive organs, to the risk per unit dose of inducing hereditary effects in offspring. The risk limit is then expressed in terms of the sum of weighted dose equivalents to all parts of the body, a quantity called the "effective dose equivalent" (EDE).[20] A limit in terms of the EDE therefore reflects both the distribution of doses among the various organs and tissues and their assumed relative sensitivities to cancer and hereditary effects. Further, the EDE does not differentiate exposures from external and internal sources; it includes both.

The effective dose equivalent is defined formally in footnote (b) to Recommendation 3 and proposed weighting factors are listed in Notes 5 and 6, in the formal statement of proposed recommendations at the end of this notice. These factors reflect the organ-specific risks of lethal cancer, and, for the reproductive organs, the risk of serious hereditary effects in the first two generations of offspring. They are the same weighting factors as those adopted in Federal guidance on radiation protection for workers in 1987 Although our current best estimates for these effects on health would lead to somewhat different values, the differences are sufficiently small that new weighting factors are not proposed as part of these recommendations. The Agency has made this choice for several reasons. First, it should be noted that changes in the weighting factors, based on new estimates for mortality, would have no effect on the level of risk represented by a given dose to the *whole* body, since the sum of the weighting factors is, by definition, normalized to unity. (If these factors were adjusted to take into account non-lethal cancers or other factors such as age at incidence the risk level could change, but, for the same reason, this change would be small.) Thus, the general level of risk achieved would not be affected. Second, the ICRP has recently published revised weighting factors that, in addition to incorporating updated information on risks of mortality, also consider other factors such as morbidity, i.e., the risk of non-lethal cancer (but do this without changing the recommended dose limit).[7] We are reviewing those weighting factors, as well as our own estimates of organ-specific risk factors. Finally, extensive new tabulations, for each of over 700 radionuclides, of dose factors for various chemical forms and routes of exposure have recently been completed using the existing weighting factors.[21] Regulations using these dose factors are being implemented by EPA, NRC, and DOE. Changing the weighting factors for many of these regulations will require formal rulemaking. EPA will keep these considerations under review, will continue to review the choice of weighting factors as new information becomes available, and will issue guidance on improved weighting factors from time to time, following review by and consultation with affected Federal agencies.

Recommendation 3, which specifies the proposed new RPG for the general public, consists of three parts. We first set forth the text of the recommendation and some explanatory details, and then discuss the basis for the choice of the value of the RPG and other related matters. The first part of Recommendation 3 reads:

> The combined radiation doses incurred in any single year from all sources of exposure covered by these recommendations should not normally exceed a Radiation Protection Guide of 1 mSv (100 mrem) effective dose equivalent to an individual. The Radiation Protection Guide applies to the sum of the effective dose equivalent resulting from exposure to external sources of radiation during a year and the committed effective dose equivalent incurred from the intake of radionuclides during that year

[18] The guidance also included an approximately equivalent RPG for bone in terms of radium-226 in the adult skeleton (0.003 micrograms).

[19] This was an incomplete set for this scheme of protection, since many relevant parts of the body were not assigned RPGs. The 1960 RPGs for workers, by contrast, did comprise a complete set, and, for the general public, the missing values for other parts of the body were generally taken as 1/10 of the corresponding occupational values.

[20] The weighting factors are normalized so that the risk associated with a given EDE is equal to that from a uniform dose of the same magnitude to the whole body

[21] These are specified in Note 7 to the Recommendations.

This recommendation would replace the 1960 and 1961 RPGs for dose equivalent to the whole body and specified parts of the body by a single RPG of 1 mSv (100 mrem) effective dose equivalent in a year. In so doing, it would create a single limit for combined dose from external and internal radiation.

Certain radionuclides, if inhaled or ingested, may remain in and continue to irradiate the body for many years. This proposed recommendation incorporates the use of "committed" dose into guidance for the general public (this concept was introduced into Federal radiation protection guidance for workers in 1987). It provides that Federal agencies should base control of annual intake of such radionuclides upon the future dose that may result over time (that is, the committed dose), not just the "annual" dose accrued during the first year following intake. This would assure that, in regulating annual intake of such materials by members of the public, account is taken of the additional risks committed from doses that will be delivered in future years. The standard period for which committed dose is calculated is proposed to be taken as 50 years, as in the Agency's previous recommendations for workers. Although there are a few radionuclides from which doses can accrue for longer periods, the risk associated with intake of such radionuclides will be conservatively estimated, compared to the risk from a comparable external dose, because of the combined effect of the distribution over time of committed dose and the latency period for expression of cancer.

The proposed RPG is expressed in terms of both the new special SI unit "sievert" and the historically-used special unit "rem." It is not the intent of these recommendations to express a preference for either system of units, but merely to recognize the existence and acceptability of both. Federal agencies would be free to use either unit under these recommendations, but should specify conversion factors between the two systems in new regulations.

The second part of Recommendation 3 reads:

> The Radiation Protection Guide may not be reasonably achievable in some unusual situations. It may be exceeded temporarily in situations that are not anticipated to recur chronically and when Recommendations 1 and 2 are satisfied, provided that the radiation dose incurred in any year does not exceed 5 mSv (500 mrem) effective dose equivalent.

It is not anticipated that this provision would be used frequently. In the past, doses to members of the public at or near such levels have been uncommon, and the Agency expects this to continue to be true. We have identified two examples of situations in which such doses are known to occur now, and might reasonably be permitted to exceed the RPG. The first is through the incidental exposure of a family member, household member, or friend to a patient being treated (or diagnosed) using radioactive materials, for certain medical procedures (primarily in the treatment of thyroid cancer using ^{131}I). The second involves the exposure, in some unusual cases, of individuals living near radioactive contamination that has not yet been cleaned up. This almost invariably involves naturally-occurring materials, often from mining or milling operations. In situations where temporary relocation is not an acceptable alternative it may not be practical to complete such cleanup without exposing a few members of the public to doses exceeding 1 mSv (100 mrem) in a year. This provision is not intended for use as a limit in dealing with short-term emergency situations arising from nuclear accidents; these are governed by the Protective Action Guides for nuclear incidents (EPA–520/1–75–001–A).

The third part of Recommendation 3 reads:

> Continued exposure of an individual over substantial portions of a lifetime at or near the level of the Radiation Protection Guide should be avoided. This will normally be achieved through conformance of individual sources to Recommendations 2 and 4.

In recommending an RPG of 1 mSv (100 mrem) in a single year, it has been necessary to balance the practical regulatory need for an RPG expressed in terms of *annual* dose against the public health objective of adequately limiting *lifetime* risk. We anticipate that satisfying the criteria specified in Recommendations 2 and 4 will almost invariably achieve this objective. However, in the unlikely event that circumstances were such that continued exposure at or near the RPG over substantial portions of a lifetime could occur, this portion of Recommendation 3 explicitly expresses the criterion that chronic exposure at such levels should be avoided.

Basis for the Radiation Protection Guide

In the latter part of the twentieth century, society has become increasingly unwilling to accept risks imposed by activities that produce environmental pollutants. Many of the benefits of industrialized society, however, are brought about by activities that carry with them some unavoidable elements of risk. This is especially the case for so-called "non-threshold" pollutants like radiation, for which it is assumed that there are no risk-free levels. The risk to an individual from exposure to ionizing radiation, as discussed above, is assumed to depend linearly upon the radiation dose, without a threshold. Under current guidance the average member of the public now receives, from all the sources to which that guidance has consistently been applied, only a very small dose—less than 0.01 mSv (1 mrem) in a year.[22] The average risk of fatal cancer incurred from such an exposure is estimated to be somewhat less than 5 in ten million.

The cumulative risk to society associated with the variety of current uses of radiation is now governed by the dual requirements that *each* use be justified and that its effect on public exposure minimized by optimizing radiation protection. These requirements would be continued and strengthened under proposed Recommendations 1 and 2. Typically, this would result in a distribution of annual doses from each source of radiation exposure ranging from zero for most members of the population to a maximum value (established under Recommendation 4) accruing to a small number of individuals. The RPG serves as an upper bound on the highest doses resulting from the sum of all such distributions. As such, it acts as a limit on the annual increment of risk, now and in the future, to the theoretically most exposed individual with typical consumption and other relevant behavior habits.

In selecting the proposed value for the RPG the Agency has had to consider a number of judgmental factors: the relation between a limit on annual dose and the implied lifetime risk; the degree of protection achieved through the application, by regulatory authorities, of optimization to the derivation of source limits, as well as their consideration of the various possibilities for multiple exposure to current and future sources, under Recommendation 4; and, finally, the record to date on the operational

[22] During the period 1960 to the present, the current RPG has not consistently been applied to exposure due to natural sources. The primary examples are building materials and radon in domestic groundwater supplies; these contribute *additional* average effective dose equivalents to the U.S. population of 0.035 mSv (3.5 mrem) and 0.01–0.06 mSv (1–6 mrem), per year, respectively. Tobacco smoke contributes a further, at present incompletely characterized, dose. (These estimates are derived from *Ionizing Radiation Exposure of the Population of the United States*, National Council on Radiation Protection and Measurements Report 93, Bethesda, MD (1993).)

application of ALARA (i.e., the difference between source limits and the doses actually experienced).

It is anticipated that the proposed RPG, applied in the context of these proposed recommendations, would, under most circumstances, result in lifetime risks to the most exposed members of the public from man-made radiation in the environment of less than one in ten thousand. This expectation is based on past experience under current radiation protection guidance, cited above, coupled with the improvements in protection proposed here—most particularly those proposed under Recommendations 2, 3, and 4. Recommendation 2 strengthens the requirement that doses be maintained as low as reasonably achievable; Recommendation 3 reduces the RPG; and Recommendation 4 requires source-specific limits that take into account the present and future potential for doses from other sources (and are therefore normally only a fraction of the RPG). EPA has, in a number of previous actions, concluded that a lifetime risk level no greater than about one in ten thousand provides an acceptable level of protection. These include the National Emission Standards for Hazardous Air Pollutants (NESHAPs), the National Primary Drinking Water Standards, and the Agency's guidelines for site-specific risk management under the Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund"). These recommendations propose that this level of protection is also appropriate for application in this Federal Radiation Protection Guidance for Exposure of the General Public and would be achieved through the cumulative application of these recommendations.

In addition, the proposed five-fold reduction in the RPG and the accompanying requirement that it be applied to the sum of external and committed internal doses would assure that maximum risks permitted to even the most highly exposed individuals are greatly reduced, compared to those permitted under the current RPGs. Although not many people are exposed near the RPG, a few cases of such high risks do now exist. These are usually associated with technologically enhanced exposure to natural radioactive materials. Examples include phosphate mining residues in Idaho and Florida, radium processing wastes in New Jersey, Illinois, and Colorado, and uranium mill tailings at publicly accessible locations in a number of western states. Under the current RPGs, annual doses due to external exposure up to 5 mSv (500 mrem) are permitted, in addition to organ doses from internal exposure up to 15 mSv (1500 mrem), depending on the organ and the radionuclide. Such doses imply lifetime risks up to 250 in one million for each year of external exposure, and up to 40 in one million for each year of internal exposure. The proposed RPG of 1 mSv effective dose equivalent would limit the incremental lifetime risk associated with each year of combined external and internal exposure to 50 in one million, a significant reduction in risk.

Finally, the Agency notes that the proposed RPG is consistent with levels found acceptable and in use by the international community. A value of 1 mSv per year is recommended as the upper bound on doses to members of the public by both the ICRP and the International Atomic Energy Agency, and is in common use throughout the world.

To provide a perspective on the above levels of risk, it may be noted that the average American is exposed annually to an effective dose equivalent of about 3 mSv (300 mrem) from natural background radiation, including an average contribution of about 2 mSv (200 mrem) from radon in homes. This exposure is three times the proposed RPG, and each year's exposure corresponds to an incremental lifetime risk of 150 in one million. Although the average level of exposure to natural background provides perspective, it does not, however, provide a justification for the RPG, since it represents an uncontrollable source of risk, and the RPG applies to controllable sources.

The levels of risk assumed to be associated with radiation exposure may also be compared to involuntary and voluntary risks actually incurred in common activities. For example, the essentially involuntary risk of dying of a household accident averaged about 110 in a million per year, between 1980 and 1990, and the average probability of dying of an automobile accident in the same decade, a voluntary risk, was 240 in a million per year. We emphasize that all of these examples are provided for perspective only, and that the existence of other risks, voluntary or involuntary, is not a justification for any particular incremental radiation risk.

EPA recognizes that some of the assumptions that underlie the proposed RPG are not readily quantified, or are based on experience that may not accurately predict the future. We will continue to review exposure of the general public, with a view to initiating recommendations for any further modification of these recommendations that may be warranted to ensure that low risks to individuals are maintained.

Other Matters Related to the Radiation Protection Guide

In developing these recommendations, EPA also considered risk to the unborn from exposure of pregnant women. It is clear that, in general, the fetus is more sensitive to many environmental carcinogens, mutagens, and teratogens than are adults, because the rate of cell division in their developing organs is far greater. This appears to be the case for radiation as well, which can act in any of these three ways. Of these risks, the most important at the levels of exposure addressed by these recommendations is mental retardation due to exposure to radiation during the eighth to fifteenth weeks of gestation, as discussed earlier.

In considering the importance of the risk of mental retardation to the choice of the RPG, we note that the sensitive period for inducing this effect represents a very small part (0.2%) of a normal lifetime, the time span addressed by the risk limitation contemplated by these recommendations. This sensitive period should be considered in conjunction with the observation that sources governed by these recommendations typically yield exposure that is uniformly distributed in time, and almost never yield high-level, short-duration doses. (Accidents are not addressed by this guidance.) Based on these two observations, coupled with the numerical values for radiation risks cited earlier, EPA concludes that the risk of mental retardation from the relatively small exposure of the unborn that would accumulate during the short period of sensitivity before birth will be smaller than the risk of cancer associated with the very much longer period following birth, during which time a relatively much larger exposure to sources governed by these recommendations could accumulate. EPA believes, further, that it is not appropriate to base a general limit for members of the public on the highly unlikely circumstance that the entire RPG is delivered during the short period of significantly elevated susceptibility of the unborn. We conclude, therefore, that these proposed recommendations would provide adequate protection of the unborn without specifying a separate limit specifically for this purpose.

An opposite situation is posed in considering the risk to members of the population who are within one or two decades of the end of a normal lifetime. In this case the risk, instead of being higher, is lower. The risk of cancer in

this population approaches being an order of magnitude smaller than the risk to an average member of the population, and the risk of genetic consequences is normally no longer present. EPA has not proposed a higher RPG for this population because, as noted for the case of the unborn, these recommendations are based on limiting the risks that accrue over a lifetime, not on a yearly basis. The RPG is expressed as an annual limit simply for ease of implementation. We also note that a limit that was different for different ages of members of the public would pose severe implementation difficulties.

Implementation of measures for assessment and control of internal exposure to radionuclides commonly makes use of intake-to-dose conversion factors. EPA has previously tabulated such values for use in implementing the Federal Guidance for Protection of Workers, in Federal Guidance Report No. 11, Limiting Values of Radionuclide Intake and Air Concentration, and Dose Conversion Factors for Inhalation, Submersion, and Ingestion (EPA-520/1-88-020). The dose conversion factors in this report and its subsequent editions also apply to intake of radionuclides by members of the general public. For external sources, exposure-to-dose conversion factors are tabulated in Federal Guidance Report No. 12, External Exposure to Radionuclides in Air, Water, and Soil (EPA 402-R-93-081).

These dose conversion factors are appropriate for application to any population adequately characterized by the set of values for physiological parameters developed by the ICRP and collectively known as "Reference Man."[23] The actual dose to a particular individual from a given intake is dependent upon age and sex, as well as other characteristics. As noted earlier, implementing limits for the general public expressed as age and sex dependent quantities would be difficult. (Clearly, it would be impracticable to conduct an annual survey of age and sex at every location of a potential source of public exposure.) More importantly, the variability in dose due to these factors is comparable in magnitude to the uncertainty in our estimates of the risks which provide the basis for our choice of the RPG. For this reason EPA believes that, for the purpose of providing radiation protection under the conditions addressed by these recommendations, the assumptions exemplified by Reference Man adequately characterize the general public, and a detailed consideration of age and sex is not generally necessary. The most obvious exception is for large doses delivered in a short period of time, as in an accident, for which case the appropriate response is addressed by separate EPA recommendations (EPA-520/1-75-001-A).

The proposed RPG is sufficiently small that the dose any organ might receive will be far below threshold levels for non-stochastic health effects (i.e. effects on health, such as burning of the skin, cataracts, impairment of fertility, and more serious effects which can lead to early death, all of which only occur when threshold levels of dose that are greater than 0.5 Sv (50 rem) are exceeded). That is, adequate protection of every organ from non-stochastic health effects is automatically ensured by the proposed RPG. These recommendations therefore do not include separate limits to prevent the occurrence of non-stochastic effects.

The sum of weighted organ doses that comprises the effective dose equivalent does not include an allowance for cancers induced by irradiation of the skin. In some circumstances, however, in the assessment of total health detriment in populations, dose to the skin may be large enough to warrant consideration of fatal cancers due to skin dose. These proposed recommendations provide for adding to the effective dose equivalent a term that is the product of the dose equivalent to skin (averaged over the entire skin surface) and a weighting factor of w_{skin}=0.01 in such cases.

Recommendation 4

Recommendation 4 consists of two parts. The first reads:

> Authorized limits for sources should be established to ensure that individual and collective doses in current and future populations satisfy the objectives of this guidance. These limits may be developed for categories of sources or for specific sources. Authorized limits for sources should normally limit doses to a fraction of the Radiation Protection Guide for all sources combined.

Authorized limits are standards, regulations, technical specifications, or other requirements established by a responsible authority to ensure that the objectives of this guidance with respect to limitation of doses will be satisfied. Implementation of the ALARA requirement (Recommendation 2) will involve consideration of collective doses to populations,[24] of control mechanisms, and of other factors that will differ for each category of sources, and will usually lead to control levels that result in doses to individuals less than the RPG (Recommendation 3). However, there are many different categories of activities using radiation that can lead to exposure of members of the public. These currently include medical uses of radiation and their supporting activities; nuclear electric power facilities and their supporting fuel cycle facilities; research and industrial users; weapons production, storage, and disposal facilities; technologically-enhanced exposure to natural radiation sources; consumer products; space applications; disposal sites for radioactive wastes; and decommissioned sites at which radioactive materials were formerly used. It is therefore also necessary to ensure that total doses to individuals, who may be exposed not only to more than one source in a given category in a few cases, but more often to a number of different categories of sources at one time, are not likely to exceed the RPG. It is not intended that this objective be implemented through apportionment of the RPG among categories of sources; this would be impracticable. Rather, this consideration, which must encompass the potential for doses to the general public both now and in the future, will necessarily be a broad judgment, based on general observations of the characteristics of existing activities, projections for their use in the future, and the potential for presently unidentified future uses.

To implement these objectives, authorities responsible for limiting exposure of the public should govern sources through use of "authorized limits" established either for categories of similar sources or for specific sources. In establishing these authorized limits, since the ALARA process considers actual costs and capabilities of controls, it is important that assessments of doses to individuals and populations be carried out realistically and comprehensively. Such assessments should contain neither unnecessarily unrealistic assumptions that overestimate doses nor omit any significant contributions to risk or detriment, since either of these would invalidate the ALARA determination. Further, authorities should consider, in addition to the design capabilities of

[23] ICRP No. 23 *Report of the Task Group on Reference Man*, 1974.

[24] These recommendations are not intended to require numerical limits for collective dose. Although the determination of ALARA levels necessarily involves optimization of the collective dose, the regulations that implement these levels can be expressed in terms of individual or collective dose, total or concentration of activity released, installation and use of specified controls, or any other specification that the regulatory authority finds appropriate.

facilities for control of releases, expected departures from anticipated design performance. Finally, in the case of authorized limits established for broad categories of sources, the judgments will often necessarily be broad and may lead to somewhat higher values, with further implementation of the ALARA process left to management of the individual sources within a category.

Authorized limits currently exist for a wide variety of sources, at levels that are fractions of the proposed RPG. For example, in 1977 EPA established general limits for dose received from all radionuclides, combined, via all exposure pathways, combined, from most facilities involved in the nuclear fuel cycle combined, including power reactors, in 40 CFR Part 190. The principal limit, 25 millirem (0.25 mSv) per year to the whole body, is 25% of the proposed RPG. Additional site specific limitations are established, for example, by the Nuclear Regulatory Commission in license conditions for individual commercial reactor sites, or in requirements for specific types of facilities, such as low level waste sites in 10 CFR Part 61. EPA has recently established source-specific limits for doses from all radionuclides, combined, via all air pathways from individual sources of radionuclide emissions, including all Federal facilities, in 40 CFR Part 61. These generally require limiting doses to 10 millirem (0.1 mSv) per year effective dose equivalent, or 10% of the proposed RPG. Finally, the national drinking water standards at 40 CFR Part 141 limit doses from water at the tap to 4 millirem (0.04 mSv) per year whole body or organ dose from all man-made radionuclides, or 4% or less of the proposed RPG. In each of these cases, the regulatory process, under the current recommendations, supplemented in some cases by additional statutory requirements, has resulted in requirements ensuring that maximum dose to individuals from a specific source or category of sources is a small fraction of the proposed RPG for dose from all sources combined. Although this situation is anticipated to continue, we believe it is prudent to note explicitly that authorized limits should normally satisfy this condition.

Once such authorized limits are established, it will no longer be necessary to further evaluate contributions to doses from any other source as part of the management of the operations of a specific source. These requirements thus serve to avoid the need to perform detailed, and in some cases very difficult to validate, evaluations of the combined incremental doses from other sources at individual sites. Conversely, if these requirements are exceeded (or are absent), then such evaluations may be necessary to assure conformance to the RPG (Recommendation 3).

The second part of Recommendation 4 reads:

> Sources should be designed not to exceed authorized limits, and should be operated so as to maintain doses to members of the general public as low as reasonably achievable within such limits.

The ALARA principle applies not only to the establishment of authorized limits, but also to detailed management of facilities where sources of radiation are prepared, employed, stored, or transported. This is necessary and appropriate because authorized limits must usually provide flexibility for anticipated deviations from design performance, and controls usually can perform better than their design limits. Thus, exposure of the general public, even if a source conforms to authorized limits, will not be ALARA when lower exposures are reasonably achievable.

As exemplified by the performance of many facilities over the past two decades, doses to the public usually can be maintained far below authorized limits through responsible and skillful control of radiation sources. This has required careful management and supervision of radiation protection activities, including the choice and implementation of radiation control measures for sources of exposure of members of the public, training in procedures to control such exposure, and monitoring, assessment, and reporting of exposure levels and doses at appropriate on-site and off-site locations. The routine management of a facility and decisions on how, or whether, particular actions should be carried out can, in the aggregate, be as (or more) significant for radiation protection of the public as the design of the facility and choice of its authorized limit.

The selection of authorized limits and the application of the ALARA principle to operations requires technically informed judgments. Thus, the practice of ALARA must be the responsibility primarily of those persons who control and manage sources of radiation under the oversight of the responsible public authorities; that is, it should not be the responsibility of individual members of the public, who are not familiar with radiation protection practices. For example, consumer products containing radioactive materials, and instructions for their use and disposal, should be designed to maintain radiation doses that are ALARA, and members of the public who use them should not have to rely upon their own judgment on this issue. The ALARA principle must be implemented by those who are directly responsible for radiation protection, or who are otherwise professionally responsible for health, safety, and environmental protection aspects of radiation sources.

Recommendation 5

> Risks associated with exposure of the general public to radiation that may occur due to Federal agency decisions, and the policies upon which these decisions are based, should be made known to the public in a timely fashion as part of the decision process. The degree of detail and type of information made available should be appropriate to the potential radiation exposures involved. Information on risks should encompass estimates of the risks of effects on health over time, and of the uncertainties in such estimates. Information on policies should include reference to this Federal radiation protection guidance for the general public and other relevant Federal policies.

To judge the validity and acceptability of decisions about Federal activities which not only bring benefits but also pose risks, the public requires clear and, to the extent possible, quantitative information. In the case of proposed Federal actions involving exposure to radiation, this includes information on the biological effects of radiation, on the levels of risk associated with exposures that may result from the actions, and on the Federal policies that underlie the action.

Requirements for the development and presentation of these kinds of information may be found in the National Environmental Protection Act (NEPA), 42 U.S.C. §§ 4231 et seq.; Title III of the Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. §§ 9601 et seq.; the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and in other legislation. Such information serves to assist the public in becoming constructively involved in the decision process and in influencing the public policy issues that affect them.

It is the purpose of this recommendation to ensure that, when Federal agencies formulate policies and make decisions that influence the exposure of the general public, information that will adequately inform the public during the decision-making process is made available by them in a timely manner. Although it is not intended to require general dissemination of information concerning ongoing operations, nor to require major public information distribution efforts, such activities are

encouraged whenever it is reasonable to carry them out.

Recommendation 6

Assessments and records appropriate to the origin and magnitude of expected doses and the exposed population should be performed and maintained to demonstrate conformance with requirements which implement these recommendations. The types and accuracy of methods and procedures used in these assessments should be reviewed periodically to ensure that they are appropriate and are being competently applied.

Control of exposure of the public is normally ensured through analysis of releases from sources and modeling of environmental transport to hypothetical "critical groups" of the general public assumed to receive the greatest exposure. Unlike the situation for workers exposed occupationally, it is usually neither appropriate nor feasible to physically monitor doses to individual members of the public. Such dose rates and concentrations may be determined by measurement of radioactive effluents, mathematical modeling of the dispersal of radionuclides in the environment, or both.

Assessments and records required to ensure conformance with these recommendations will vary, depending upon the nature of the source of exposure. Responsible authorities will have to determine what is needed to ensure that exposures of members of the public actually are maintained within authorized limits and are ALARA. In some cases, comprehensive radiation assessment programs will be needed which include trained personnel, facility and environmental measurements, audit procedures, and maintenance of records. In many cases conservative assumptions, such as the assessment of doses to a hypothetically most exposed individual, may be used to simplify the demonstration of compliance. In still others, simple operational procedures will suffice.

This recommendation intentionally allows flexibility with respect to what should be assessed and recorded, so that the responsible authorities will be able to design optimal programs for each situation. This is intended to avoid, in particular, burdensome requirements for situations in which individual doses and detriments to populations are very low. At the same time, assessments and recordkeeping must be adequate to document that requirements which implement these recommendations have been satisfied.

Recommendation 7

Exceptions to Recommendation 3 for planned exposure to radiation should be made only for highly unusual circumstances, and only when the Federal agency having jurisdiction has carefully considered the reasons for making them in light of these recommendations. If Federal agencies authorize any exception to these values, they should make it a matter of public record.

This proposed guidance applies to emissions and exposure of the general public under normal circumstances. In developing these recommendations, EPA has considered situations that might normally arise. It is not possible to foresee all contingencies, however, and highly unusual situations may occur when exceptions to the limiting values of Recommendation 3 are appropriate. This recommendation provides that if such circumstances should arise, Federal agencies should carefully consider the balance of the guidance, including the information requirements of Recommendation 5, and make a public record of any authorized exception to Recommendation 3 (e.g., by publishing a notice in the **Federal Register** or in a local newspaper of general circulation).

Implications of these Recommendations

It is expected that these proposed recommendations could be implemented relatively easily, since most of them are already, in large part, in effect. For example, most sources are already regulated in such fashion that exposures of members of the public are a small fraction of the proposed Radiation Protection Guide of 1 mSv (100 mrem) in a year, and we are aware of no regulated sources that exceed the proposed RPG. Perhaps the most significant implication of these recommendations would be to promote consistency between Federal agencies by clarifying the basic considerations to be taken into account in the development of new standards and regulations, and in their implementation. The recommendations modernize the methodology for expressing dose, and clarify the relationship of the RPG to standards and regulations for sources, as well as the various applications of the principle that doses should be maintained "as low as reasonably achievable," and they provide, for the first time as a part of their basis, numerical estimates of the various risks from low levels of ionizing radiation.

Implementation of the proposed recommendations would require only minimal changes in Federal regulations, and should be achievable over a short period of time. Many of the changes called for are largely already well under way, major examples being the revisions recently made by the Department of Energy in their Order No. 5400.5, and those recently promulgated by the Nuclear Regulatory Commission in 10 CFR Part 20. It is expected that Federal agencies will have little difficulty in identifying and correcting any remaining problem areas, and in providing necessary flexibility and transition periods, to avoid undue impacts that might inhibit prompt implementation of new guidance.

We note in passing that in some cases (notably in the regulation of exposure of the public from the transportation of radioactive materials) conformance to existing guidance is based upon the assumption of "reasonably foreseeable" scenarios for the spatial and temporal relationship between radioactive materials and members of the public, and that because of this assurance the RPG will never be exceeded cannot be given with absolute certainty. These recommendations do not propose any changes in this regard, and EPA expects that in such cases the same approach to protection would continue to be employed to achieve conformance to these new recommendations.

The anticipated costs of implementing these recommendations are primarily those that would be incurred by the various agencies in modifying their own regulations. These are not expected to be substantial, since most of the necessary methodological changes have already been implemented in connection with the revised Federal guidance for occupational exposure issued in 1987. Unlike the situation for occupational exposure, where the need to reduce the doses received by a few highly exposed workers to conform to lower limits may lead, in some cases, to the hiring and training of additional workers, there are few direct implementation costs involved here, since most sources are already regulated to well within the proposed new requirements.

This guidance would not supersede any statutory responsibilities of the agencies that would implement these recommendations, and in some situations application of these recommendations could be superseded by specific statutory requirements. In addition, it does not create any new authority. As noted earlier, it is the purpose of this Federal guidance to provide a common framework to help ensure that the management of exposure to radiation in the United States is consistent and adequately protective. This can be carried out through regulations applicable to the public sector, through orders applicable to the internal operations of Federal agencies, through guidance, or by any other

practicable means. The individual Federal agencies, based on their statutory and administrative mandates, have determined, and would continue to determine, the details of specific regulations, orders, guidance, or other actions, the parties responsible for implementing them, and the means to do this.

The proposed recommendations differ from current guidance in significant ways. The Radiation Protection Guide for maximum radiation dose to a member of the public in a year is reduced by a factor of five, from 500 mrem to 1 mSv (100 mrem). The concept of risk-based weighting of doses to different parts of the body is adopted, and the committed dose is introduced as the primary basis for control of internal exposure. The RPG now applies to the sum of external and internal exposure. Increased emphasis is placed on keeping justified exposure as low as reasonably achievable (ALARA), and on the comprehensive consideration of doses in populations near and distant, now and in the future. The establishment of authorized limits for sources or categories of sources that are derived giving consideration to the wide variety of potential sources and their future implications for exposure that, combined, must be maintained within the RPG, and from the comprehensive application of ALARA, is recommended. The proposed recommendations recognize, for the first time in this Federal guidance, the importance of public information and of assessing and recording public exposures. Finally, these recommendations would bring U.S. radiation protection policy into conformance with that in general international use. EPA expects these changes would strengthen the overall system for radiation protection of the members of the public in the United States.

These recommendations would replace those portions of current Federal Radiation Protection Guidance (25 FR 4402) that apply to protection of the general public from ionizing radiation. It is expected that individual Federal agencies, on the basis of their knowledge of specific sources of exposure of the general public, would use this new guidance as the basis upon which to revise or develop detailed standards or regulations, to the extent that they have regulatory or administrative jurisdiction. Pursuant to my responsibilities under Executive Order 10831, the Atomic Energy Act of 1954, as amended, and Reorganization Plan No. 3 of 1970, I would propose to keep informed of Federal agency actions to implement this guidance and to interpret and clarify these recommendations, and, in consultation with affected Federal agencies, from time to time amend the clarifying notes to reflect new technical information, as necessary to promote a consistent and effective Federal program of protection of the public from radiation.

Request for Comments

EPA requests comments on any and all aspects of these proposed recommendations. We would, for example, appreciate comment on the overall approach to protection of the public embodied by these proposals, which would continue and expand upon the approach recommended for protection against the effects of exposure to radiation by national and international professional advisory bodies, and which has formed the basis for previous guidance to Federal agencies. In addition to general comments, we are also particularly interested in commenter's views on the following specific matters:

1. Should EPA consider a lower or higher value for the Radiation Protection Guide (RPG); e.g., 0.3, 0.5, or 1.5 mSv (30, 50, or 150 mrem)? What would be the rationale for such a value? If a lower value is adopted would it be necessary to modify Recommendation 4, and, if so, how could it be modified to retain flexibility to provide for possible future beneficial uses?

2. Is it necessary to provide, in Recommendation 3, for temporary exposures as high as 5 mSv (500 mrem). What specific examples of situations that justify this proposed provision currently exist, or have a high probability of occurring in the future?

3. Should the guidance recommend a single maximum risk (or dose) level for individual sources, under Recommendation 4, which would serve as an upper bound on all ALARA determinations? If this approach were adopted, would the RPG in Recommendation 3 become superfluous?

4. Should the recommendations provide guidance on the kinds of situations under which it would be appropriate for a Federal agency to invoke Recommendation 7. Are there foreseeable situations that require the existence of this proposed provision?

5. Should EPA initiate proposals to update the weighting factors for effective dose now. If so, what basis or values for these factors should we consider?

6. Has EPA correctly characterized the cost of implementing these recommendations. If not, what specific costs have we not identified, what is their estimated magnitude, and what is the basis for this estimate?

7. These proposals do not express a preference between historical radiation units, commonly used in health physics practice, and the new system of units (SI) now in scientific and international health physics use. Should they?

8. These proposed recommendations do not address protection of animals and plants. Are the proposed levels adequate to protect all plant and animal species? If not, what level would provide adequate protection? Is protection at the level of species the appropriate choice?

EPA will carefully consider all written responses to this request for comments, and we encourage interested parties to present their views at the public hearing that will be held on these proposals. Following these hearings we will, after consulting with affected Federal agencies, formulate and transmit final recommendations to the President for revisions to Federal radiation protection guidance for exposure of the general public.

Dated: December 14, 1994.

Carol M. Browner,

Administrator.

Proposed Recommendations

The following recommendations are made for the guidance of Federal agencies in the formulation of regulations and conduct of programs for the protection of the general public from ionizing radiation. Their objective is to ensure that exposure to ionizing radiation is restricted to levels that will not produce undue risk to individuals or undue harm in populations.[a] The recommendations apply to radiation exposure other than that from background radiation or received as a patient in the practice of the healing arts, as a worker, or as the result of an accident. (See Notes 1 and 2.)

1. There should be no exposure of the general public to ionizing radiation unless it is justified by the expectation of an overall benefit from the activity causing the exposure. Justified activities may be allowed, provided exposure of the general public is limited in accordance with these recommendations.

2. A sustained effort should be made to ensure that doses to individuals and

[a] The term "risk," as used here, means the statistical probability of harm to the health of an individual from exposure to radiation. "Harm in populations" from exposure to radiation, called the radiation "detriment", means the mathematical expectation of harm in the population, taking into account the probabilities and the severities of different deleterious effects.

to populations are maintained as low as reasonably achievable. (See Note 3.)

3. The combined radiation doses incurred in any single year from all sources of exposure covered by these recommendations should not normally exceed a Radiation Protection Guide of 1 mSv (100 mrem) effective dose equivalent[b] to an individual.[c] The Radiation Protection Guide applies to the sum of the effective dose equivalent resulting from exposure to external sources of radiation during a year and the committed effective dose equivalent incurred from the intake of radionuclides during that year. (See Notes 4 through 7.)

The Radiation Protection Guide may not be reasonably achievable in some unusual situations. It may be exceeded temporarily in situations that are not anticipated to recur chronically and when Recommendations 1 and 2 are satisfied, provided that the radiation dose incurred in any year does not exceed 5 mSv (500 mrem) effective dose equivalent.

Continued exposure of an individual over substantial portions of a lifetime at or near the level of the Radiation Protection Guide should be avoided. This will normally be achieved through conformance of individual sources to Recommendations 2 and 4.

4. Authorized limits[d] for sources should be established to ensure that individual and collective doses in current and future populations satisfy the objectives of this guidance. These limits may be developed for categories of sources or for specific sources. Authorized limits for sources should normally limit doses to a fraction of the Radiation Protection Guide for all sources combined. (See Note 8.)

Sources should be designed not to exceed authorized limits, and should be operated so as to maintain doses to members of the general public as low as reasonably achievable within such limits.

5. Risks associated with exposure of the general public to radiation that may occur due to Federal agency decisions, and the policies upon which these actions are based, should be made known to the public as part of the decision process. The degree of detail and type of information made available should be appropriate to the potential radiation exposures involved. Information on risks should encompass estimates of the risks of effects on health over time, and of the uncertainties in such estimates. Information on policies should include reference to this Federal radiation protection guidance for the general public and other relevant Federal policies.

6. Assessments and records appropriate to the origin and magnitude of expected doses and the exposed population should be performed and maintained to demonstrate conformance with requirements which implement these recommendations. The types and accuracy of methods and procedures used in these assessments should be reviewed periodically to ensure that they are appropriate and are being competently applied.

7. Exceptions to Recommendation 3 for planned exposure to radiation should be made only for highly unusual circumstances, and only when the Federal agency having jurisdiction has carefully considered the reasons for making them in light of these recommendations. If Federal agencies authorize any exception to these values, they should make it a matter of public record.

Notes

The following notes are provided to clarify application of the above recommendations:

1. Background radiation includes natural sources of background radiation, such as cosmic radiation and radiation from naturally-occurring radionuclides undisturbed by human activities, as well as radiation from certain other sources of exposure beyond Federal regulatory control, such as residual fallout from past nuclear accidents and weapons tests.

2. People may, by technological means, enhance their exposure to natural radiation sources that might otherwise be considered sources of background radiation. Technologically-enhanced exposures to natural radiation are usually controllable, in that they may be avoided or reduced by taking reasonable actions. Unless specifically noted, these recommendations apply to controllable technologically-enhanced exposure to such natural radiation sources.

3. The admonition to maintain doses "as low as reasonably achievable" includes consideration of economic and societal factors, and applies to radiation exposure that may occur now or in the foreseeable future. In making this judgment for doses to populations, any incremental doses to individuals that are avoidable and which make a significant contribution to collective dose should be considered.

4. Although indoor radon from proximate natural sources is considered technologically-enhanced exposure to natural radiation, Recommendations 3 and 4 of this guidance do not apply to such exposure. Specific advice for protection against exposure to indoor radon is provided in *A Citizen's Guide To Radon* (EPA document 402–K92–001 and subsequent editions) and in other EPA technical publications.

5. The following values of the weighting factors w_T may be used to implement these recommendations:

Gonads	0.25
Breasts	0.15
Red bone marrow	0.12
Lungs	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30

("Remainder" applies to the five other organs with the highest doses (of the liver, kidneys, spleen, brain, thymus, adrenals, pancreas, stomach, small intestine, and upper or lower large intestine, but excluding skin, lens of eye, and extremities). The weighting factor for each such organ is 0.06.)

6. The sum of weighted organ doses that comprises the effective dose equivalent does not include an allowance for the induction of fatal cancers in skin. In cases where dose to skin is large enough to consider such effects, this may be done by adding to the effective dose equivalent a term[e]

[b] Effective dose equivalent is a derived quantity defined as the risk-weighted sum of dose equivalents to specified organs and tissues.

Dose equivalent is the product of the absorbed dose and a quality factor which varies with the energy and type of radiation. In the system of quantities of ionizing radiation historically in use in the United States, the unit of dose equivalent is the "rem." In the international system (S.I.), the corresponding unit is the "sievert" (Sv). One sievert equals 100 rem.

The effective dose equivalent, H_E, incurred in a given period of time is the sum of the effective dose equivalent, $H_{E,ext}$, received from external exposure in that period and the committed effective dose equivalent, $H_{E,50}$, incurred from the intake of radionuclides during that period. That is,

$$E = H_{E,ext} + H_{E,50} = \Sigma_T w_t (H_{T,ext} + H_{T,50}),$$

where w_T is a weighting factor for organ or tissue T; $H_{T,ext}$ is the dose equivalent from external irradiation averaged over organ or tissue T; and $H_{T,50}$, the committed dose equivalent, is the sum of all dose equivalnts, averaged over organ or tissue. T, that may accumulate over an individual's anticipated remaining lifetime (taken as 50 years) from radionuclides retained within the body. The weighting factors satisfy the condition $\Sigma_T w_t = 1$.

The word "dose", when used alone in these recommendations, is intended to carry the specific dose unit implied by the surrounding text.

[c] The term "individual" means a typical member of any critical group of most highly exposed members of the general public; it refers to persons with typical consumption and other relevant behavior habits.

[d] Authorized limits are standards, regulations, or other requirements established by a responsible authority for categories of sources or for a specific source.

[e] Since the sum of the weighting factors is normalized to unity, addition of a further factor would strictly require adjustment of the other

Continued

that is the product of the skin dose equivalent (averaged over the whole body) and a weighting factor w_{skin} = 0.01.

7. The exposure-to-dose conversion factors tabulated in *Federal Guidance Report No. 11* (EPA–520/1–88–020), *Federal Guidance Report No. 12* (EPA 402–R–93–081), and their subsequent editions should be used for determining conformance to these recommendations. In addition, dosimetric models and conventions and models for reference persons specified by the International Commission on Radiological Protection (ICRP) may be used. Under special circumstances, other factors may be used when such factors are more appropriate on the basis of well-established scientific evidence.

8. To ensure that specific sources or categories of sources, including their installed control capability, are designed and operated to achieve as low as reasonably achievable levels of exposure, a variety of quantitative and qualitative analysis and decision methods may be used to determine authorized limits. These, in addition to considering radiation detriment and risk, and direct costs, may also take into account societal and other economic factors. Statutory requirements may impose additional constraints on the selection of authorized limits.

factors. In practice, the addition of this small factor for skin does not warrant any change.

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federal register

Friday
December 23, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 165
Safety Zone; Upper Mississippi River;
Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Paducah 94–001]

RIN 2115–AA97

Safety Zone; Upper Mississippi River, Mile 42.0 to Mile 43.7

AGENCY: Coast Guard, DOT.

ACTION: Final rule: extension of effective date.

SUMMARY: The Coast Guard has established a safety zone on the Upper Mississippi River. This regulation is needed to restrict vessel traffic in the regulated area to prevent an allision with the salvage equipment located mid-channel at mile 43.0, Upper Mississippi River. The regulation restricts general navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river. The conditions requiring this action will extend until January 24, 1995 so that the work may be completed.

EFFECTIVE DATE: This regulation is effective on December 23, 1994.

FOR FURTHER INFORMATION CONTACT: LCDR Eric J. Mosher, Operations Officer, Captain of the Port, Paducah, Kentucky at (502) 442–1621

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LCDR Eric J. Mosher, Project Officer, Marine Safety Office, Paducah, Kentucky and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent decreases in the river levels of the Upper Mississippi River have necessitated the removal and salvage of two sunken barges at miles 43.0 and 42.7 that have been determined to be a hazard to navigation in that area. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately

Background and Purpose

The situation requiring this regulation is the reduction of the channel width to 200 feet from below the Thebes Railroad Bridge at mile 43.7 to mile 42.0 due to the presence of salvage equipment. The salvage equipment is on scene to refloat two sunken barges at miles 43.0 and 42.7 that have been determined to be a hazard to navigation in that area. The regulation is intended to restrict all vessels to the following provisions. Meeting, overtaking or passing in the safety zone is prohibited. Upbound tows transiting the safety zone are limited in size to twenty barges and not more than four wide. Downbound tows transiting the safety zone are limited in size to fifteen barges and not more than three wide. During daylight hours, all vessels approaching the safety zone must contact the Coast Guard representative on board the M/V CAPTAIN VAL on VHF–FM channels 6, 213 or 16 for passing instructions. Upbound vessels must call in when approaching mile 39.0 and downbound vessels must call in when approaching mile 58.0. During hours of darkness, all vessels must use all reasonable means to identify vessels transiting or approaching the safety zone and make safe passing arrangements. All vessels must transit the safety zone at their slowest safe speed and should expect delays. All vessels are urged to give the widest possible berth to salvage equipment and operations. All vessels transiting the area are urged to exercise extreme caution.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because the duration of this emergency situation is anticipated to be short, the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, Paducah, Kentucky will monitor river conditions and will authorize unrestricted entry into the restricted area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Marine Safety Office Paducah, Kentucky for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. In section 165.T02–064 paragraph (b) is revised to read as follows:

§ 165.T02–064 Safety Zone: Upper Mississippi River Mile 42.0 to 43.7.

* * * * *

(b) *Effective Dates.* This section is effective from August 24, 1994 and terminates on January 24, 1995.

* * * * *

Dated: December 19, 1994.

Robert M. Segovis,

Commander, U.S. Coast Guard, Captain of the Port, Paducah, Kentucky.

[FR Doc. 94–31789 Filed 12–22–94; 8:45 am]

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A cumulative list of Public Laws for the 103d Congress, Second Session, was published in Part II of the **Federal Register** on Monday, December 19, 1994.

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