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Monday
March 13, 1995

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

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

ACTION: Notice of informal conference.

SUMMARY: On January 21, 1981, the Secretary of the Interior conditionally approved Utah's program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (see 46 FR 5899). On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (see ''Supplementary Information'' below).

Under the provisions of OSM's regulations at 30 CFR 733.12(c), OSM will hold an informal conference to discuss the facts surrounding such a notification if an informal conference is requested by the State. By letter dated February 22, 1995, DOGM requested an informal conference. Accordingly, OSM hereby notifies Utah and the public that it will hold an informal conference. All interested persons may attend the informal conference.

DATES: OSM has scheduled an informal conference on Tuesday, March 14, 1995, beginning at 10:00 a.m, m.s.t.

ADDRESSES: The conference will be held in the Red Butte Room on the second floor of the Double Tree Hotel, 215 West South Temple, Salt Lake City, Utah 84180.

Copies of the Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Ehmett, Acting Assistant Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program (46 FR 5899).

On February 7, 1995, OSM notified the Director of the Utah Division of Oil, Gas and Mining (DOGM) that it had reason to believe that violations of the Utah surface coal mining regulatory program approved under SMCRA were resulting from the failure of the State to enforce all or any part of the program effectively with respect to the State's regulation of mine access and haul roads (administrative record No. UT–1023).

Since the approval of Utah's program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with DOGM officials about the State's performance. Recent discussions and investigations have centered on inadequacies of DOGM's implementation of the approved program in areas set forth below.

1. *Mine Access and Haul Roads:* Failure to regulate mine access and haul roads included within the Utah program definition of ''coal mining and reclamation operations'' at Utah Administrative Rule (Utah Admin. R.) 645–100–200 and the virtually identical Federal definition of ''surface coal mining and reclamation operations'' at 30 CFR 700.5.

2. *Exclusion of Public Roads From Regulation:* Both the State and Federal definitions include all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of mining-related activities and for haulage or excavation purposes. Contrary to the manner in which Utah is implementing its program, the corresponding Federal definition of ''surface coal mining operations'' in section 701(28) of SMCRA does not exclude, as asserted by Utah, all roads designated as public roads or open to public use except when deeded by mine operators to public entities to avoid compliance with SMCRA.

In the February 7, 1995, notification, OSM specified a date for DOGM to present a plan to correct the deficiencies in the implementation of its program. On February 22, 1995, DOGM responded that its position with regard to OSM's wish to have the Division reconsider its permitting decisions is set forth in the complaint filed in *Utah v. Lujan*, 92–C–063–G (D. Utah). DOGM also responded that the facts and legal argument set forth in the complaint were being incorporated as its response to OSM's February 7, 1995, letter. Lastly, DOGM requested that OSM hold an informal conference to discuss the facts supporting the assertions of the February 7, 1995, letter (administrative record No. UT–1024).

Section 733.12(c) of 30 CFR requires OSM to provide the State regulatory authority an opportunity for an informal conference.

The informal conference may pertain to the facts of the deficiencies or the time period for accomplishing remedial actions.

Conference Rules

The informal conference is an opportunity for OSM to discuss the status of the implementation of Utah's program with Utah officials.

No testimony from the public will be taken but a verbatim transcript of the meeting will be kept.

Dated: March 2, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–5923 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[VA37–1–6812a; FRL–5170–9]

Designation of Areas for Air Quality Planning Purposes; Virginia; Withdrawal of Final Rule Pertaining to the Clean Air Act Promulgation of Reclassification of the Hampton Roads Ozone Nonattainment Area in Virginia and Attainment Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. These actions were published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on these actions, EPA is withdrawing the January 17, 1995 final rule actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On January 17, 1995, EPA published a final rule to reclassify the Norfolk-Virginia Beach-Newport News area (Hampton Roads) in Virginia from marginal to moderate nonattainment for ozone (60 FR 3349), because the area failed to meet its November 15, 1993 attainment date. The action was based on air quality monitoring data for ozone. The January 17, 1995 document also set forth the method that EPA will use henceforth to determine if areas have attained an air quality standard. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as non-controversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (60 FR 3349). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (60 FR 3366). By publishing a document announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period. Therefore, EPA is withdrawing the January 17, 1995 final rulemaking actions pertaining to the Hampton Roads reclassification and EPA's method to determine if areas attained an air quality standard. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

The January 17, 1995 action also determined that a number of marginal ozone nonattainment in the states of Delaware, Pennsylvania, New Jersey, Ohio, and West Virginia have ambient air monitoring data that meets the ozone air quality standard. Those determinations were based on monitored air quality readings for ozone during the years 1991–1994. The January 17, 1995 action was not a redesignation action for these marginal areas for which air quality monitoring data indicates attainment of the standard. The Clean Air Act requires that a separate redesignation request be submitted by the appropriate states to EPA. These determinations are not affected by this withdrawal document. This withdrawal document only pertains to the final rulemaking actions on the Hampton Roads reclassification and EPA's method to determine if areas have attained an air quality standard.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: March 1, 1995.

Stanley Laskowski,

Acting Regional Administrator.

For the reasons set out in the preamble, 40 CFR part 81 is amended by withdrawing the final rule published on January 17, 1995 at 60 FR 3349.

[FR Doc. 95–6110 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[WI44–02–6881; FRL–5168–4]

Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of Oshkosh, Wisconsin, to Attainment for Carbon Monoxide; Correction

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule, correction.

SUMMARY: On August 17, 1994 the USEPA published a final rule approving the redesignation Oshkosh, Wisconsin to attainment status for carbon monoxide (59 FR 42168). The supplementary information to the final rule included several typographical errors, and the final rule incorrectly listed the date the rule was to take effect. This correction clarifies the intent of the supplementary information and provides the correct effective date of October 17, 1994.

The USEPA regrets any inconvenience caused by these errors.

EFFECTIVE DATE: This correction is effective March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–0669.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

Correction of Publication

Accordingly, the final rule published on, August 17, 1994 at 59 FR 42168 FR Doc. 94–20172, is corrected as follows:

1. On page 42169 of the final rule, at the top of the first column, the ''Action'' heading is incorrectly labelled as ''C;'' the correct label is ''B.'' In the same column, the ''Miscellaneous'' heading is labelled as ''IV;'' the correct label is ''III.'' Similarly, in column two, the ''Petitions for Judicial Review,'' heading is labelled as ''D;'' the correct label is ''C.''

§ 81.350 [Corrected]

2. On page 42169, in § 81.350, in the Wisconsin carbon monoxide table, in the entry for ''Winnebago County'' the designation date in column 2 and the classification date in column 4 are corrected to read ''October 17, 1994''.

[FR Doc. 95–5659 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382 and 391

[FHWA Docket No. MC–93–2]

RIN 2125–AD47

Controlled Substances Testing; Recordkeeping and Reporting Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the controlled substances and alcohol testing regulations to require a motor carrier to prepare an annual summary of alcohol and controlled substances test results only upon the demand of an FHWA representative, either as part of an inspection, investigation, or special study; or as part of the anti-drug management information system (MIS). The FHWA will use the data to conduct investigations, to analyze its current approach to deterring and detecting alcohol and controlled substances misuse within the motor carrier industry, and to modify program goals, as appropriate.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: For information regarding program issues: Mr. Ronald Finn, Office of Motor Carrier Standards, (202) 366–0647, and for information regarding legal issues: Mr. David Sett, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published a final rule in the **Federal Register** on November 21, 1988, requiring motor carriers to test commercial motor vehicle drivers for the use of controlled substances (53 FR 47134). The rule also required all carriers to compile a report containing certain information about their current controlled substances testing program. The FHWA published a final rule on December 23, 1993, under FHWA Docket No. MC–93–2, which amended 49 CFR 391.87(h) to modify the controlled substances testing information required to be maintained. The final rule also required that the report be submitted to the FHWA, if requested, as part of the FHWA anti-drug management information system (MIS) (58 FR 68220). On February 15, 1994, the FHWA published a final rule under FHWA Docket Nos. MC–116, MC–92–19, and MC–92–23, which amended 49 CFR Part 382 to apply these same MIS requirements to employers subject to the new controlled substances and alcohol testing program mandated by the Omnibus Transportation Employee Testing Act of 1991 (59 FR 7484).

On January 21, 1994, the American Trucking Associations, Inc. (ATA), filed a petition under 49 CFR 389.35 for reconsideration of the December 23, 1993, rulemaking. The ATA requested that the requirement that an annual summary be prepared and maintained by all employers be limited to those relatively few employers who have been selected to submit the annual summaries to the FHWA MIS. On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. Because the MIS reporting provisions in the December 23, 1993, rule are the same as those appearing in the new rules for drug and alcohol testing under 49 CFR Part 382, the FHWA's response to the petition applies in the same manner to both 49 CFR Part 382 and § 391.87(h).

The ATA's petition has been granted in part and denied in part. The FHWA's response to the petition is reprinted here as appendix A but will not appear in the Code of Federal Regulations.

Consistent with the response to the petition, the controlled substances and alcohol testing regulations at 49 CFR Parts 382 and 391 are amended to require a motor carrier to prepare an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or as part of the MIS. The new requirements will apply as of March 13, 1995 and begin with the annual summaries for the year 1994.

Also included in this document as appendix B are MC–154 and MC–155 for use in filing reports with the FHWA MIS. The MIS forms were printed as an appendix to the February 15, 1994, final rule. The ''EZ'' form was inadvertently published without part D, Alcohol Testing Information. The MIS forms are being reprinted here in their entirety and will not appear in the Code of Federal Regulations. They are meant merely as examples of the forms that will be sent to employers who have been selected to submit reports to be used in the MIS. For employers who have not been selected to submit MIS reports, but who do compile annual summaries, any form may be used. This includes electronic storage as long as all the required data elements are available in paper form.

The Office of the Secretary published a final rule on August 19, 1994 (59 FR 42996), changing 49 CFR 40.29(g)(6) to require laboratories to submit quarterly instead of monthly statistical summary reports to employers. The FHWA is changing the reference in 49 CFR 391.81(h)(1) from monthly laboratory summaries to quarterly laboratory summaries in order to be consistent with 49 CFR Part 40.

Rulemaking Analyses and Notices

The FHWA finds that further notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) inasmuch as the annual summary issue has already been the subject of notice-and-comment rulemakings (RIN 2125–AC85, 2125–AC81, and 2125–AD06), including three December 15, 1992, notices of proposed rulemaking (57 FR 59516, 59539, and 59567). In addition, the FHWA believes that further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In light of the earlier opportunities to comment on this subject, and the comments actually received on this issue, the FHWA does not anticipate that providing an additional comment period would result in the receipt of useful information.

The FHWA also believes that this final rule is exempt from the 30-day delayed effective date requirement of the Administrative Procedure Act under 5 U.S.C. 553(d)(1) because it ''grants or recognizes an exemption or relieves a restriction.'' This final rule removes the requirement that all employers prepare an annual summary and instead requires only those employers directed by the FHWA to submit such reports, either as part of an investigation or the MIS, to prepare them. Therefore, the FHWA finds that good cause exists to proceed directly to a final rule.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 nor significant under the Department of Transportation's regulatory policies and procedures. In this final rule, the FHWA removes the requirement that all employers prepare an annual summary. Instead, only those employers required to submit annual summaries or make them available in safety inspections must prepare them. It is anticipated that the economic impact of this rulemaking will not be substantial although this

action will reduce employers' costs of complying with the FHWA controlled substances and alcohol use and testing regulations. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. In this final rule only those employers required to submit annual summaries or make them available in safety inspections must prepare them by March 15 of the year following the date that a final test result determination is made. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements in this rule are approved until March 31, 1997, by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and have been assigned OMB control number 2125–0543.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382 and 391

Alcohol concentration, Alcohol testing, Controlled substances testing, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subchapter B, chapter III, parts 382 and 391 as set forth below.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.* and 31502: 49 CFR 1.48.

2. Section 382.401 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 382.401 Retention of Records.

* * * * *

(b) * * *

(1) * * *

(vi) A copy of each annual calendar year summary required to be completed pursuant to § 382.403.

* * * * *

3. Section 382.403 is amended by revising paragraph (a) to read as follows:

§ 382.403 Reporting of Results in a Management Information System.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

* * * * *

PART 391—QUALIFICATION OF DRIVERS

4. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31136, and 31502; and 49 CFR 1.48.

§ 391.87 [Amended]

5. In 49 CFR 391.87(h)(1) remove the word ''monthly'' and add in its place the word ''quarterly.''

6. Section 391.87 is amended by revising paragraph (h)(3) and adding paragraph (h)(4) to read as follows:

§ 391.87 Notification of test results and recordkeeping.

* * * * *

(h) * * *

(3) A motor carrier shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the motor carrier or any of its drivers. The information shall be made available for inspection at the motor carrier's principal place of business within two business days of the request.

(4) If, during the month of January, a motor carrier is provided with forms by the Federal Highway Administration on which to report the motor carrier's annual calendar year summary information, the motor carrier shall complete the forms and submit them to the Federal Highway Administration by March 15 of that year. The motor carrier shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

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

Appendix A to Preamble—Response to Petition for Reconsideration

Before the Federal Highway Administration

Decision

In the matter of: American Trucking Associations, Inc., Petitioner.

Petition for Reconsideration No. 94–11

On January 21, 1994, the American Trucking Associations, Inc. (ATA) filed a timely petition under 49 CFR § 389.35 for reconsideration of a Federal Highway Administration (FHWA) rulemaking: Controlled Substances Testing; Recordkeeping and Reporting Requirements;

Final Rule. 58 Fed. Reg. 68220 (1993). The ATA requests that the rule's requirement that an annual summary be prepared and maintained by motor carriers be limited to those carriers which have been selected to submit the summaries to the FHWA. Attached to the letter is a copy of comments which the ATA submitted to the rulemaking docket (MC–93–2). On February 3, 1994, the American Movers Conference filed a letter in support of the ATA's petition. The motion is considered as a petition for reconsideration of a rule under 49 CFR 389.35. For the reasons set forth below, the petition is granted in part and denied in part.

The rule establishes a management information system (MIS) for FHWA drug testing regulations. Certain information relating to a carrier's drug testing program (e.g., number of tests administered and number of tests with verified positive results) is required to be compiled and maintained on an annual basis as part of the MIS. Prior to the December 23, 1993, rulemaking, the FHWA already required substantially the same information to be compiled and maintained. 49 CFR 391.87(h). In addition to deleting some items of information and adding others, the subject rulemaking amended § 391.87(h) to require that annual summaries, required to be maintained by all carriers, be submitted, in the form provided in the rulemaking, to the FHWA by a relatively small number of selected carriers each year for statistical purposes.

The MIS provisions in the subject rulemaking are similar to those appearing in the new rules for drug and alcohol testing. 49 CFR Part 382. Therefore, any discussion or amendment of § 391.87(h) pursuant to the petition applies in the same manner to Part 382.

The ATA petitions the Administrator to reconsider the requirement that all carriers be required to complete annual summary forms. The ATA recommends that only carriers which have been selected to submit annual summaries to the FHWA be required to complete them.

The ATA states that it ''supports reasonable recordkeeping requirements * * * [but] opposes recordkeeping requirements which are unduly complex and exceed legitimate needs for monitoring compliance.'' The ATA argues that requiring all carriers to complete annual summaries is unreasonable and constitutes a ''severe paperwork burden'' without commensurate safety benefits.

As mentioned above, the rulemaking made no significant substantive changes to the information already required to be maintained and prepared in § 391.87. Annual summaries have been required since the inception of the drug testing program in 1989.

The rule, therefore, does not increase, but only continues, any data maintenance burden on carriers.

The rule also does not significantly increase the procedural burden. Contrary to the assumption in the petition, the rule does not require all motor carriers to complete annual summary forms. Only those carriers which have been selected to submit data are required to put that data on a form, and mail it to the FHWA. Thus, the ATA's cost estimate, based on FHWA's computation of time to complete one form, of $1.3 to $5.4 million for 270,000 carriers to complete the forms is not accurate. In actuality, only a fraction of those 270,000 carriers will be required to complete and submit a form in any given year.

The rule does continue the requirement of preparing and maintaining certain testing information. For the vast majority of carriers, this means that the information, which consists of yearly totals in various categories, must be culled from the carrier's files and kept in one place. No forms need to be completed. Indeed, the form of the summary is not specified at all. The carrier can choose the form best suited to its operations, including computer technology. § 390.31. Such electronic data storage and retrieval systems should facilitate the generation of the summaries.

Though an assessment of the burden of compliance with the annual summary requirement should not properly include the cost of form preparation, it must be acknowledged that a cost is incurred simply in the compiling and maintaining of the summary information. Though difficult to quantify, the cost, added to an already costly drug testing program, may be significant, given the large number of carriers subject to the rules. The addition of alcohol testing to drug testing, along with the inclusion of intrastate with interstate carriers subject to testing, will only increase the overall cost of data maintenance. Given these costs, the question becomes, can the regulatory benefit to the FHWA in the context of the program as a whole justify the imposition of the addition costs associated with the annual summary?

The ATA argues that a summary of a year's activity is of no value in determining compliance, because drug testing requirements are driver and trip specific. Even the rate at which the employer is actually randomly testing its drivers cannot be determined from review of an annual summary, the ATA asserts, because ''the summary provides only the number of covered employees, while the random selection criteria is based on driver positions.''

It is correct that an employer must test its employees at a given rate based on the number of its driving positions during the course of the year, and that the annual summary includes a different number—the total number of drivers subject to testing during the year. It is incorrect, however, that the annual summary is of no use in determining a carrier's compliance with the random testing rate. In most, but not all, instances, the number of random tests performed will appear on the annual summary, which is part of the rate equation. No other information on the annual summary can be used directly to enforce compliance with drug testing requirements, however.

The annual summary also has value in indirect enforcement of drug testing requirements. Nowhere else is information on a carrier's drug testing program compiled in one location. Drug testing data is usually maintained in individual driver qualification files. The annual summary gives an overall picture of the drug testing program, and may alert FHWA representatives to irregularities which can be further investigated through other employer records.

A collateral benefit lies in the picture which an annual summary presents a carrier of its program as a whole. With testing information scattered about in individual files, and perhaps in different locations, it may be difficult for a carrier to determine the overall effectiveness of its program. Inconsistencies and flaws which might otherwise be missed may be highlighted by the annual summary, allowing the carrier to make any changes to the program necessary to ensure compliance. Yet, mandating completion of an annual summary is a one size fits all management approach. Many carriers may have alternative, and less costly, methods of accomplishing the same oversight.

In summary, the annual summary offers limited benefits to the FHWA in direct enforcement of testing requirements, and perhaps greater benefits in indirect enforcement. It may be helpful, though not essential, for an FHWA inspector to have the information available. On the other hand, these marginal benefits are never realized in regard to the vast majority of carriers neither asked to submit the summaries they labored to complete, nor made the subject of a compliance audit.

It is not reasonable or cost effective in terms of enforcement, therefore, to require all carriers to complete an annual summary by March 15 of each year, when only a mere fraction of those summaries are ever reviewed by FHWA officials. Many prudent carriers may very well wish to prepare and maintain a summary each year as a management aid or in anticipation of an inspection or submission request, but they should not be required to do so.

For carriers that are inspected, however, it may be beneficial for an FHWA inspector to review an annual summary. Therefore, the rule will be amended to require a carrier to produce an annual summary only upon the demand of an FHWA representative, either as part of an inspection, investigation or special study; or for statistical purposes. Thus, the ATA's petition to restrict the summary requirement to statistical purposes is denied, though the instances in which the summaries must be completed is being greatly reduced consistent with the petition.

This scheme will operate well with the requirements in the new alcohol and drug testing regulations to be implemented on January 1, 1995, and 1996. The new regulations, Part 382, contain an MIS for drug and alcohol testing similar to that in Part 391 for drug testing. Part 391 will sunset as Part 382 testing is implemented. Both Parts 382 and 391 now provide for prior notice. Sections 382.401(d) and 391.87(h)(3) allow the employer to make all records required to be maintained in Part 382 or § 391.87 ''available at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.'' Upon request, the carrier would gather the records together, along with

the most current annual summary, and present them to the FHWA representative.

Wherefore, the petition of the American Trucking Associations, Inc. for reconsideration of the FHWA final rule at 58 Fed. Reg. 68220 (January 21, 1994,) is hereby denied in part and granted in part consistent with the foregoing. The FHWA will publish a final rule accordingly.

Dated: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

Appendix B to Preamble—Information Systems Data Collection Forms

Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the drug and alcohol testing information sought by the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) in the Drug and Alcohol Testing MIS Data Collection Form. These instructions explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii–iv (for drug results) and v–vi (for alcohol results) as an example to facilitate the process of completing the form correctly.

This reporting form is comprised of four sections. Collectively, these sections address the data elements required in the FHWA and the DOT drug and alcohol testing regulations. The four sections, the page number for the instructions, and the page location on the reporting form are shown below.

Section	Instructions page	Reporting form page
A. Motor Carrier Employer Information.	i	1
B. Covered Employees.	i	1
C. Drug Testing Information.	ii–iv	2
D. Alcohol Testing Information.	iv–vi	3

Page 1—MOTOR CARRIER EMPLOYER INFORMATION (Section A) requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature, date, and current telephone (including the area code) must be entered by the person certifying to the correctness and completeness of the report.

Page 1—COVERED EMPLOYEES (Section B) requires a count for each driver that must be tested under DOT regulations. There is only one category of covered employees for FHWA regulated employers, and that is ''Drivers''. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of drivers, who are covered employees, under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

Page 2—DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. ''Drivers''). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing.

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on random, post-accident/non-fatal, post-accident/fatal, reasonable suspicion, return to duty, and follow-up testing, respectively. Items necessary to complete these tables include:

(1) The number of specimens collected in each testing category;

(2) The number of specimens tested which were verified negative and verified positive for any drug(s); and

(3) Individual counts of those specimens which were verified positive for each of the five drugs.

Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, PRE–EMPLOYMENT TESTING

Information on actions taken with those persons testing positive is required at the end of Section C. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Three types of information are necessary to complete the left side of this table. The first column (''NUMBER OF SPECIMENS COLLECTED''), requires a count for all collected specimens. It *should not* include refusals to test. The second column (''NUMBER OF SPECIMENS VERIFIED NEGATIVE''), requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO).

The third column (''NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS''), refers to the number of specimens provided by job applicants or employees that were verified positive. ''Verified positive'' means the results were verified by your MRO.

The right hand portion of thee table (''NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG''), requires counts of positive tests for each of the five drugs for which tests were completed (i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines). The number of positive specimens for each drug should be entered in the appropriate column for that drug type. Again, ''verified positive'' refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results should be included once in each of the appropriate columns (marijuana *and* cocaine).

A sample table is provided on page iii with example numbers.

Page 2—Below the table for drug testing information is a box (''Number of persons denied a position as a covered employee following a verified positive drug test''). This is a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

Page 2—Also following the table that summarizes DRUG TESTING INFORMATION, you must provide counts for employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

Sample Applicant Test Results Table

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses ''Pre-Employment'' testing to illustrate the correct procedures for completing the form.

A. Urine specimens were collected for 157 job applicants for driver positions during the reporting year. This information is entered in the first column of the table in the row marked ''PRE-EMPLOYMENT''.

B. The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for driver positions were negative (i.e., no drugs were detected). Enter this information in the second column of the table in the row marked ''PRE-EMPLOYMENT''.

C. The MRO for your company reported that 4 of those 157 specimens from applicants for driver positions were positive (i.e., a drug or drugs were detected). Enter this information in the third column of the table in the row marked ''PRE-EMPLOYMENT''.

D. With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana.
#2	Amphetamines.
#3	Marijuana and Cocaine (Multi-drug specimen).
#4	Marijuana.

Type of test	Number of specimens collected	Number of specimens verified negative	Number of specimens verified positive for one or more of the five drugs	Number of specimens verified positive for each type of drug				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Pre-employment	157	153	4	3	1	0	0	1

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Since two different drugs were detected in specimen #3 (multi-drug), entries are made in both the marijuana and the cocaine columns for this specimen. Information on multi-drug specimens must also be entered in the table, SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG.

Note that adding up the numbers for each type of drug in a row (''NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG'') will not always match the number entered in the third column, ''NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS''. The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section C.

Page 2—SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG requires information on specimens that contained more than one drug. First, indicate the NUMBER OF VERIFIED POSITIVES. Then, specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 specimens, then you would write ''3'' as the number of verified positives, and ''3'' in the columns for ''Marijuana'' and ''Cocaine''. If marijuana and opiates were detected in 2 specimens, then you would write ''2'' as the number of verified positives, and ''2'' in the columns for ''Marijuana'' and ''Opiates''.

Page 2—EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required by FHWA regulation.

Page 2—DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

Page 3—ALCOHOL TESTING INFORMATION (Section D) requires information for alcohol testing by category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., ''Drivers''). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. A sample table is provided on page vi with example numbers.

Four types of information are necessary to complete this table. The first column (''NUMBER OF SCREENING TESTS''), requires a count of all screening alcohol tests performed. It *should not* include refusals to test. The second column (''NUMBER OF CONFIRMATION TESTS'') requires a count of all confirmation alcohol tests performed.

The third column (''NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04''), refers to the number of test results equal to or greater than 0.02, but less than 0.04.

The fourth column (''NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04''), refers to the number of specimens with a result equal to or greater than 0.04. Note: For return to duty testing, a confirmation test result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.

Page 3—Below the table for alcohol testing information is a box (''Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater''). This is a count of those persons who were not placed in a covered position because their alcohol test indicated an alcohol concentration of 0.04 or greater.

Page 3—Also following the table that summarizes ALCOHOL TESTING INFORMATION, you must provide a count of the ''Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)''. This information should be available from the personnel office and/or drug and alcohol program manager.

Sample Applicant Test Results Table

The following example is for ALCOHOL TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other reasons for testing in the table which require you to summarize testing results for employees. This example will use ''Pre-Employment'' testing to illustrate the procedures for completing the form.

A. Screening tests were performed on 157 job applicants for driver positions during the reporting year. This information is entered in the first blank column of the table in the row marked ''PRE-EMPLOYMENT''.

B. Confirmation tests were necessary for 6 of the 157 applicants for driver positions. Enter this information in the second blank column of the table in the row marked ''PRE-EMPLOYMENT''. The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C. The confirmation test results for 2 of the applicants for driver positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the third blank column of the table in the row marked ''PRE-EMPLOYMENT''.

D. The confirmation test results for 3 of the applicants for driver positions were equal to or greater than 0.04. Enter this information in the fourth blank column of the table in the row marked ''PRE-EMPLOYMENT''.

Type of test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment	157	6	2	3

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, ''NUMBER OF CONFIRMATION TESTS''. These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all categories of testing in the table in Section D.

Page 3—Number of employees administered drug *and* alcohol tests at the same time resulting in a verified positive drug test *and* an alcohol test indicating an alcohol concentration of 0.04 or greater, requires that a count of all such employees be entered in the indicated box.

Page 3—VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION, requires information on the NUMBER OF COVERED EMPLOYEES committing such a violation, a description of the VIOLATION committed (e.g., pre-duty alcohol use, on duty alcohol use, on duty alcohol possession), and a description of the ACTION TAKEN in response to the violation.

Page 3—EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

Page 3—ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA Drug and Alcohol Testing MIS Data Collection Form OMB No. 2125–0543

A. Motor Carrier Employer Information

Company _____

Year Covered by This Report: _____

Principal Place of Business for Safety:

Physical Address _____

Mailing Address _____

_____

_____

_____

U.S. DOT Number _____

ICC Number _____

_____

I, the undersigned, certify that the information provided on this Federal Highway Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____

Signature

_____

Date of Signature

_____

Title

_____

Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 2 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS–1); Federal Highway Administration; 400 7th St., SW., Washington, DC 20590; OR Office of management and Budget, Paperwork Reduction Projects (2125–0543); Washington, DC 20503.

B. Covered Employees

Employee category	Covered Employees					
	Number of FHWA covered employees	Number of employee covered by more than one DOT operating administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

Read Before Completing the Remainder of this Form:

1. All items refer to the current reporting period only (for example, January 1, 1994–December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

- Results should be reported only for employees in COVERED POSITIONS as defined by FHWA/DOT drug and alcohol testing regulations.
- The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, amphetamines, and alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in the tables entitled ''EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG (or AN ALCOHOL) TEST''. Do *not* include refusals for testing in other sections of this report.

4. Do *not* include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. Drug Testing Information

Type of test	Number of specimens collected	Number of specimens verified negative	Number of specimens verified positive for one or more of the five drugs	Number of specimens verified positive for each type of drug				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Pre-employment								
Random								
Post-Accident/non-fatal ...								
Post-Accident/fatal								
Reasonable suspicion								
Return to duty								
Follow-up								

Number of persons denied a position as a covered employee following a verified positive drug test:

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG

Number of verified positives	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation	
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation	

Drug training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Type of Test	Number of screening tests	Number of confirmation tests	Number of confirmation test results equal to or greater than 0.02, but less than 0.04	Number of confirmation test results equal to or greater than 0.04
Pre-employment				
Random				
Post-accident/non-fatal				
Post-accident/fatal				
Reasonable suspicion				
Return to duty				
Follow-up				

Number of persons denied a position as a covered employee following an alcohol test indicating an alcohol concentration of 0.04 or greater:

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Number of employees administered drug *and* alcohol tests at the same time resulting in a verified positive drug test *and* an alcohol test indicating an alcohol concentration of 0.04 or greater:

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION

Number of covered employees	Violation	Action taken
	Driver used alcohol while performing safety-sensitive function	
	Driver used alcohol within 4 hours of performing safety-sensitive function	
	Driver used alcohol before taking a required post-accident alcohol test	

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation	
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation	

Alcohol Training/Education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations	

Drug and Alcohol Testing Management Information System (MIS) ''EZ'' Data Collection Form

Instructions

The following instructions are to be used as a guide for completing the Federal Highway Administration (FHWA) and the U.S. Department of Transportation (DOT) Drug and Alcohol Testing MIS ''EZ'' Data Collection Form. This form should only be used if there are no positive drug tests and no alcohol misuse to be reported by your company. These instructions explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FHWA and DOT drug and alcohol testing regulations.

SECTION A—MOTOR CARRIER EMPLOYER INFORMATION requires the company name for which the report is completed, a current address, the U.S. DOT number, and the ICC number (if applicable). A signature and title, date, and current telephone (including the area code) must be entered by the person certifying the correctness and completeness of the report.

SECTION B—COVERED EMPLOYEES requires a count for each employee category that must be tested under FHWA regulations. There is only one category of covered employees for FHWA, and that is ''Drivers''. The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the calendar year being reported. An employee who is hired twice or more in the reported year must be counted as a single employee.

Additional information must be completed if your company employs personnel who perform duties covered by the drug and alcohol rules of more than one DOT operating administration. NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s). The employees covered by more than one DOT operating administration must be counted under *all* appropriate operating administrations.

SECTION C—DRUG TESTING INFORMATION requires information for drug testing, refusals for testing, and training/education. The first table requests information on the NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE in each category for testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in a covered position only (i.e. ''Drivers''). Each part of this table must be completed for each category of testing. These numbers do not include refusals for testing. ''COLL'' requires the number of specimens collected for each category of testing. ''NEG'' requires a count for all completed tests that were verified negative by your Medical Review Officer (MRO). Do *not* include results of quality control (QC) samples submitted to the testing laboratory in any of the categories.

Following the table for drug testing data you must provide counts for drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FHWA regulation.

DRUG TRAINING/EDUCATION requires information on the number of supervisory personnel who have received the required drug training during the current reporting period.

SECTION D—ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the NUMBER OF SCREENING TESTS CONDUCTED in each category of testing. These categories include: (1) pre-employment, (2) random, (3) post-accident/non-fatal, (4) post-accident/fatal, (5) reasonable suspicion, (6) return to duty, and (7) follow-up testing. All numbers entered into this table should be for applicants or company employees in covered positions only (i.e., ''Drivers''). Enter the number of alcohol screening tests conducted for each category of testing. These numbers do not include refusals for testing.

Following the table that summarizes ALCOHOL TESTING INFORMATION, you must provide a count of the ''Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations)''. This information should be available from the personnel office and/or drug and alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the NUMBER OF COVERED EMPLOYEES who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FHWA regulation.

ALCOHOL TRAINING/EDUCATION requires information on the number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations during the current reporting period.

FHWA Drug and Alcohol Testing MIS ''EZ'' Data Collection Form OMB No. 2125–0543

A. Motor Carrier Employer Information

Company _____

Year Covered by This Report: _____

Principal Place of Business for Safety:

Physical Address _____

Mailing Address _____

_____

_____

_____

U.S. DOT Number _____

ICC Number _____

I, the undersigned, certify that the information provided on the attached Federal Highway Administration Drug and Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____

Signature

_____

Date of Signature

_____

Title

_____

Phone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statement or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Highway Administration estimates that the average burden for this report form is 30 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Director, Office of Motor Carrier Standards (HCS–1); Federal Highway Administration; 400 7th St., SW., Washington, DC 20590; OR Office of Management and Budget, Paperwork Reduction Project (2125–0543); Washington, DC 20503.

B. COVERED EMPLOYEES

Covered Employees						
Employee Category	Number of FHWA Covered Employees	Number of Employees Covered by More Than One DOT Operating Administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

Number of Specimens Collected and Verified Negative														
Employee Category	Pre-Employment		Random		Post-Accident/ Non-Fatal		Post-Accident/ Fatal		Reasonable Suspicion		Return to Duty		Follow-up	
	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg
Drivers														

Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation: Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	

Drug training/education	Number
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Number of alcohol screening tests conducted							
Employee category	Pre-employment	Random	Post-Accident/non-fatal	Post-Accident/fatal	Reasonable suspicion	Return to duty	Follow-up
Drivers							

Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation: Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:	

Alcohol training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:	

[FR Doc. 95–6043 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 950301063–5063–01; I.D. 032194D]

RIN 0648–AF38

Pacific Coast Groundfish Fishery; Gear Modification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the groundfish trawl regulations and simplifies the marking requirements for commercial vertical hook-and-line gear that is closely tended in the Pacific Coast Groundfish fishery. This rule promotes the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by enhancing the effectiveness of minimum mesh size used in trawl gear, making trawl gear

requirements consistent for all bottom trawl gear and less likely to be circumvented, updating the regulations to be more consistent with changes in gear technology, and removing unnecessary burdens on the industry.

EFFECTIVE DATES: September 8, 1995, except § 663.22(c) is effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule, based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides a socioeconomic framework procedure under which gear regulations may be changed without amending the FMP. A proposed rule was published at 59 FR 40511 (August 9, 1994) requesting comments through September 6, 1994, on changes to the regulations for trawl gear and commercial vertical hook-and-line gear (also called Portuguese longline). Two comments were received and are addressed below.

Comment 1: One comment was received from the American Factory Trawler Association, which represents at-sea processing vessels and the catcher vessels that deliver to them. They were concerned that prohibiting chafing gear from encircling the net would also prohibit the use of protective gear which is needed under choker, transfer, and lifting straps on the codends of pelagic trawls. The straps are used to transfer and lift a full codend onboard a vessel and to empty it. Protective gear is needed to cover the entire circumference of the net under the straps, because the straps will damage any unprotected portion of the net they contact.

Response: NMFS agrees that this type of protective gear, which has been in use for some time, was not meant to be prohibited. The proposed rule for pelagic trawls has been revised to allow a band of mesh no wider than 16 meshes to encircle the net under chokers, lifting straps or transfer cables, but over riblines and restraining straps that are attached to the net.

Comment 2: A fisherman using Scottish seine gear to catch sanddabs off California was concerned that the 4.5-inch (11.5-cm) minimum mesh size throughout the net would enable his target species to escape. Most of the mesh in his gear would satisfy the 4.5-inch (11.5-cm) minimum mesh size—he uses 4.5-inch (11.5-cm) mesh in the last 70 meshes of the net, and over 5-inch (12.8-cm) mesh in the wings and behind the footrope and headrope. However, he needs smaller mesh in the intermediate portion of the net. In his initial letter he stated that he uses 3.5-inch (9.0-cm) mesh in the intermediate portion of the net. In a second letter, he explained that he modified his gear and found that 4.0-inch (10.3-cm) mesh in the intermediate portion of the net could be used, but that 4.5-inch (11.5-cm) mesh still allowed sanddabs to escape.

Response: The requirement to apply the minimum mesh size throughout the net was proposed to enhance escapement of juvenile fish, reduce bycatch, make it impossible to reduce mesh size by cinching off the codend, and facilitate enforcement by using consistent regulations for all bottom trawls. The information provided by the commenter does not justify changes to the proposed rule. However, the commenter may wish to supply additional information to the Council in support of his position and seek modification of this final rule. He also may submit an application for an experimental fishing permit (EFP), which enables fisheries to be conducted that otherwise would be prohibited. If the issue is found to warrant further consideration, an EFP may be issued for the purpose of gathering information to determine if and how the regulation should be changed. The Council then could reconsider the appropriateness of the minimum mesh size for Scottish seine gear.

Changes or Clarifications to the Proposed Rule

The only substantive change to the rule is made as a result of comment #1, described above. Several additional clarifications and editorial changes also have been made, which are consistent with the rule as proposed. (1) The corners of the terminal end of chafing gear may be attached to the net (§ 663.22(b)(3)). (2) The minimum mesh size requirements in existing rules for chafing gear no longer apply. Escapement is provided for by limiting chafing gear to only one-half the circumference of the net. (3) Section 663.22(b)(5) is edited slightly to clarify that the first 20 ft (6.15 m) of pelagic trawls must be bare rope or net with a minimum mesh size of 16-inches (40.6-cms), or any combination of bare rope and 16-inch (40.6-cm) mesh. (4) The type of identification needed to mark fixed gear is clarified. (5) The description of authorized fishing gear at § 663.22(a) is clarified to explain that ''set net'' includes anchored gillnet or trammel net.

Summary of the Final Rule

The text of the final rule is summarized below, incorporating the above changes. Additional background and rationale are found in the proposed rule and Environmental Assessment (EA) prepared for this action.

1. *Apply the trawl minimum mesh size throughout the net.* Currently, the minimum mesh size applies to the last 50 meshes of the trawl net. This final rule applies the minimum mesh size requirements throughout the net. This is intended to eliminate the practice of tying off the net in front of the last 50 meshes above which smaller mesh could be used legally.

2. *Remove the legal distinction between bottom and roller trawls and the requirement for continuous riblines.* Once the minimum mesh size became identical for bottom and roller trawls in May 1992 (57 FR 12212, April 9, 1992), there was no longer a need to distinguish between the two in the regulations. This rule also eliminates the requirement for continuous riblines to be sewn to bottom and roller trawls, if the vessel has onboard a net with less than 4.5-inch (11.43-cm) mesh.

3. *Clarify the distinction between bottom and pelagic (midwater) trawls.* Current pelagic-trawl requirements state that the footrope at the trawl mouth must be unprotected and that sweeplines, including the bottom of the bridle, must be bare.

This rule adds two requirements to discourage dragging small-mesh pelagic trawls on the sea floor by making the nets more fragile. First, rollers, bobbins, tires, discs, or any other similar device used to protect the net from the sea floor may not be used anywhere in the net. Second, for at least 20 ft (6.15 m) immediately behind the footrope or headrope of the net, bare ropes or 16-inch (40.6-cm) minimum mesh must encircle the net.

4. *Modify chafing gear requirements.* Chafing gear is webbing or other material attached to a trawl net to protect the net from wear, particularly the codend as it scrapes the sea floor or slides onto the vessel. If attached in certain ways, chafing gear could reduce the effective mesh size by compressing or covering the webbing. The current regulations require that: Chafing gear not be connected directly to the terminal end of the net; in bottom trawls, chafing gear have a minimum mesh size of 15 inches (38.1 cm) unless only the bottom half of the codend is covered; and in roller trawls in the Vancouver, Columbia, and Eureka subareas, and in pelagic trawls in all subareas, chafing gear covering the

upper one-half of the codend must have a minimum mesh size of 6 inches (15.24 cm). These provisions are changed to provide the necessary gear protection without unduly impeding escapement of fish through the webbing, and to be consistent with changes in the technology and requirements for bottom and roller trawls. This rule provides that: (a) Chafing gear may cover no more than 50 percent of the circumference of the net, except for 16-mesh ''skirts'' (designed to protect the underlying gear) under the lifting or splitting straps (chokers), or the transfer cables on pelagic trawls; (b) no section of chafing gear may be longer than 50 meshes of the net to which it is attached; (c) except at its corners, the terminal end of each section of chafing gear must not be connected to the net; (d) chafing gear must be attached outside any riblines or restraining straps; and (e) there is no limit on the number of sections of chafing gear that may be used. This rule removes the minimum mesh size requirements applicable to chafing gear.

5. *Modify marking requirements for commercial vertical hook-and-line gear.* Current marking requirements required for fixed gear (pole, flag, light, radar reflector, and buoy) were found to be a burden for vessels closely tending their commercial vertical hook-and-line gear. Although the gear is anchored, it is lightweight and can be dragged by prevailing winds and currents. Also, the cost of the radar reflector, lights, and buoys is substantial in comparison to the cost of the gear itself. Since most vessels using this gear stay in the immediate vicinity of the gear, tending the lines frequently, there appears to be less need for such extensive marking requirements. This rule relaxes the marking requirement for commercial vertical hook-and-line gear that is closely tended by requiring only a single buoy clearly identifying the vessel's owner or operator.

6. *Correct a mesh definition.* Reference to double-ply mesh at 50 CFR 663.2 is changed to ''double-bar mesh''. Ply refers to the number of strands twisted together to make twine. The regulation was intended to mean two lengths of twine tied together in one knot, or ''double-bar'' mesh.

For the reasons stated above and in the proposed rule at 59 FR 40511 (August 9, 1994), NMFS concurs with the Council's recommendations and herein announces the final rule.

Classification

This final rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for this rule (contained in the EA/Regulatory Impact Review) and the Assistant Administrator concluded that there would be no significant impact on the environment.

This rule has been determined to be not significant for purposes of E.O. 12866.

Under section 553(d)(1) of the Administrative Procedure Act, the change to the fixed gear-marking requirements at 50 CFR 663.22(c) is made effective upon publication in the **Federal Register** because it relieves a restriction on commercial vertical hook-and-line fishermen who closely tend their gear. In contrast, changes to the definitions and trawl gear requirements at 50 CFR 663.2 and 663.22(a) and (b) are effective 6 months after filing with the Office of the Federal Register to allow time for fishermen to modify gear to comply with these new requirements. The Council recommended, and the Assistant Administrator agrees, that this 6-month delay in effectiveness reduces the economic burden on the industry by enabling it to replace at least some of its gear after it is worn out rather than requiring an immediate and abrupt change to all trawl nets.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 663.2 is amending the definition for ''Commercial fishing'' by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and amending the definition for ''Fishing gear'' by redesignating paragraphs (a) through (w) as paragraphs (1) through (23), respectively and by revising newly redesignated paragraphs (1) through (3), (6), (14), (16), and (18) to read as follows:

§ 663.2 Definitions.

* * * * *

Fishing gear:

(1) *Bobbin trawl* means the same as a roller trawl, and is a type of bottom trawl.

(2) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls and Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls at § 663.22(b)(6) is a bottom trawl.

(3) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

* * * * *

(6) *Double-bar mesh* means two lengths of twine tied into a single knot.

* * * * *

(14) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

* * * * *

(16) *Roller trawl (bobbin trawl)* means a trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

* * * * *

(18) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

* * * * *

3. In § 663.22, paragraphs (a), (b)(2) through (b)(4), and (c) are revised; paragraph (b)(5) is removed; and paragraph (b)(6) is redesignated as paragraph (b)(5) and revised to read as follows:

§ 663.22 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending

on the gear being measured) less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE

[In Inches][1]

Trawl Type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.6 centimeters; 4.5 inches = 11.4 centimeters.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a ''skirt'') may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net, and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy except as provided in paragraph (c)(2) of this section; and

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. ''Closely tended'' means that a vessel is within visual sighting distance or within ¼ nautical mile (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or paragraph (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

* * * * *

[FR Doc. 95–6044 Filed 3–8–95; 9:30 am]

BILLING CODE 3510–22–P

50 CFR Part 681

[Docket No. 950224060–5060–01; I.D. 021395A]

RIN 0648–AH85

Western Pacific Crustacean Fisheries; 1995 Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1995 final quota for crustaceans; request for comments.

SUMMARY: NMFS announces a 1995 quota of zero lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. This action is necessary to ensure protection and conservation of lobsters in this fishery. Also, fishermen who wish to participate in an Experimental Fishing Program in this fishery during 1995 are encouraged to contact the Director, Southwest Region, NMFS (Regional Director). The purpose of any experimental fishery would be to allow for a precisely controlled harvest designed to acquire data for assessing the status of the spiny and slipper lobster stocks.

DATES: Effective July 1, 1995. Comments are invited until April 12, 1995.

ADDRESSES: Comments about this notice and requests for information about the Experimental Fishing Program should be sent to Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, 310–980–4034; or Alvin Z. Katekaru, 808–973–2985.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by NMFS according to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP), which was prepared by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. Regulations affecting this fishery appear at 50 CFR part 681.

Ordinarily, an annual quota for the NWHI crustacean fishery is announced in two steps. First, based on previous years' fishery data, sampling during research cruises, and other available data, the Regional Director determines an initial quota, which is announced in the **Federal Register**, usually in February each year. Next, a final quota is announced as soon as possible on or after August 15 of the fishing year. The final quota is based on actual commercial fisheries data collected during the first month of fishing, which begins July 1 (when there is a quota).

A substantial decrease in lobster landings and catch-per unit-of-effort (CPUE) in 1990 raised concern that fishing effort was excessive. Low lobster CPUE continued into the early part of 1991, prompting an emergency closure of the fishery from May through November 1991.

Amendment 7 to the FMP, which was approved by NMFS in February 1992, created an annual 6-month closed season and an adjustable annual fleet

harvest quota determined by a formula. This quota is established as described above. The initial quota for 1992 was forecast at 750,000 lobsters; however, a research cruise to the NWHI in June 1992 indicated that recruitment had not improved. Based on the CPUE information from the first month of the commercial fishery and the data collected on the research cruise, the final quota was set at 438,000 lobsters.

In 1993, the FMP quota formula yielded an estimated quota of zero, and there was no commercial fishing in the NWHI.

In 1994, the FMP quota formula yielded an initial quota of 200,000 lobsters; however, data obtained during the first month of fishing yielded a revised quota of 20,900 lobsters. However, by the time the final quota was determined, it had been exceeded and the fishery was closed by emergency rule.

A review panel established by the Council, consisting of the Crustacean Plan Team, Advisory Panel, and reviewers with stock assessment and quota management experience, suggested a new quota system tied to overfishing guidelines rather than maximum sustainable yield, which is used in the current formula. An analysis by the Council and NMFS to evaluate the new quota proposal, as well as modification to the existing quota setting procedures, is underway, but has not been completed.

The review panel recommended that NMFS conduct additional statistical analyses to determine if use of new statistical procedures would produce more reliable results. After conducting these analyses, NMFS determined that a new statistical procedure should be used and applied it in deriving the initial quota for 1995.

Despite the quota derived from the FMP formula, NMFS concludes that the initial and final quota should be zero, and the NWHI commercial lobster fishery should be closed in 1995. There are two reasons for this determination. First, managing the fishery to ensure that such a low quota is not exceeded would be difficult to accomplish. There are 15 permits in force for the fishery. While it is unlikely that all permit holders would gear up for the fishery, five to seven vessels might participate in a ''derby'' fishery, with each trying to maximize its share of the quota. Data from the 1994 fishery show that the cumulative daily catch by the five vessels that participated averaged almost 4,000 lobsters. With seven vessels, the expected cumulative daily catch would be about 5,600 lobsters. Even with daily catch reports, given the requirement that 7-day notice be given to fishermen prior to prohibiting further landings, there would be potential for exceeding the quota.

Second, the low 1995 quota is likely to result in a ''derby'' fishery, which would be economically inefficient and would encourage fishermen to take safety risks. Given the substantial cost to prepare a vessel for fishing, once outfitted, a vessel operator would be under pressure to maximize catch, regardless of weather and sea conditions, in order to recoup expenses and make a profit. However, since an initial quota of 38,513 lobsters would generate only about $250,000 in total ex-vessel revenues for the entire commercial fishery, the likelihood that all participants would benefit from fishing is small, and certainly does not outweigh the risk of a ''derby'' fishery.

Nevertheless, in the interest of improving the scientific basis for future management, NMFS will consider allowing controlled fishing under an Experimental Fishing Permit program, which could be authorized under § 681.26 of the regulations. Controlled fishing under an experimental fishing program could provide added information regarding rebuilding of the stocks, to the extent stock rebuilding has existed since late 1994, while ensuring that the harvest of 38,513 lobsters is not exceeded. In conjunction with the data from the planned 1995 research cruise, any information obtained from fishing under an Experimental Fishing Program could be important for deriving the initial quota for 1996. However, data obtained from any experimental fishing would not be used to modify the 1995 quota. Also, NMFS encourages fishermen who wish to participate in an Experimental Fishing Program in this fishery during 1995 to contact the Regional Director.

Classification

This action is authorized by 50 CFR part 681 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–6051 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 48
Monday, March 13, 1995

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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–102–1]

Importation of Fruit Trees From France

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. plants (except seeds) to be imported into the United States as restricted articles, if grown in private nurseries in France and certified by the French plant protection service to be free of various diseases. This action would relieve restrictions on the importation of these articles from France without presenting a significant risk of introducing plant pests into the United States.

We are also proposing to remove Laredo, TX, from the list of ports equipped with plant inspection stations.

DATES: Consideration will be given only to comments received on or before April 12, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–102–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange or Mr. Peter Grosser, Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, MD, 20737–1238, (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction of plant pests into the United States.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. The regulations prohibit or restrict the importation of most plants, roots, bulbs, seeds, and other plant products. These articles are classified as either ''prohibited articles'' or ''restricted articles.''

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ), APHIS, has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Under § 319.37–5(b) of the regulations, articles (except seeds) of the genera *Chaenomeles* (flowering quince), *Cydonia* (quince), *Malus* (apple, crabapple), *Pyrus* (pear), and certain species of the genus *Prunus* (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) may be imported into the United States as restricted articles if grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands. They may be imported from France as restricted articles only if grown in government nurseries. All of these restricted articles must be accompanied by a phytosanitary certificate of inspection stating where the article was grown and certifying that the article was found by the plant protection service of the country in which grown to be free of various plant diseases. Also, all of the restricted articles listed above, except those grown in Canada, are subject to a 2-year postentry quarantine period, as specified in § 319.37–7. In postentry quarantine, restricted articles are grown in isolation and observed in order to detect plant pests undetectable by inspection at the port of entry.

The French Ministry of Agriculture has asked that species of the above mentioned genera grown in private nurseries in France be allowed to enter the United States as restricted articles. In response to this request, APHIS representatives visited France in June 1994, to review France's fruit tree certification program. Following that review, APHIS determined that the process by which the French plant protection service certifies these articles to be ''disease-free'' is sufficient to allow their entry into the United States without increasing the risk of plant pest introduction. Therefore, we are proposing to amend the regulations to allow *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Pyrus* spp., and certain *Prunus* spp. grown in private nurseries in France to be imported as restricted articles into the United States under the same conditions already applied to those same articles when grown in government nurseries in France.

Also, for the sake of clarity, we are proposing to incorporate the provision in § 319.37–5, footnote 7, concerning *Prunus* spp. not immune to plum pox virus, into a new paragraph (b)(2) in § 319.37–5, and to remove footnote 7.

Port of Laredo Plant Inspection Station

Some restricted articles may be imported into the United States only under a written permit issued by APHIS. Permits are required for these restricted articles because the articles appear to present a substantial risk of carrying plant pests at the time of importation. Section 319.37–3(a) of the regulations lists the categories of restricted articles that require a written permit for importation.

Section 319.37–14(b) of the regulations contains a list of the approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a written permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest risk, may be imported only through ports equipped with special inspection and treatment facilities (plant inspection stations). Ports equipped with plant inspection stations are indicated on the list by an asterisk.

We are proposing to amend the regulations by removing the port of Laredo, TX, from the list of ports with plant inspection stations in § 319.37–14(b). The fumigation chamber at the Laredo plant inspection station was found to be in violation of State clean air regulations by the Texas Natural Resources and Conservation Commission on July 7, 1994, and has not been used since that date. Since the volume of plant material requiring written permits and entering through Laredo has been low and because fumigation without a fumigation chamber would be difficult, APHIS elected to close the plant inspection station on October 1, 1994. As a result, certain plants and plant products can no longer be imported through Laredo, but must go to another port instead.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to allow species of the genera *Chaenomeles*, *Cydonia*, *Malus*, *Pyrus*, and certain species of *Prunus* (those resistant to plum pox virus) grown in private nurseries in France to be imported into the United States. Currently, under 7 CFR 319.37–5, APHIS allows restricted articles of these five genera to be imported if grown in government or private nurseries in Belgium, Canada, Great Britain, the Federal Republic of Germany, or The Netherlands, but from France only if grown in government nurseries.

During the first nine months of fiscal year 1994, approximately 312,893 fruit trees valued at $1.64 million were imported into the United States. *Malus* spp. accounted for 99.9 percent (312,840) of imported fruit trees. Thirty-two trees of *Prunus* spp. and 21 of *Pyrus* spp. were also imported. There were no imports of *Chaenomeles* spp. or *Cydonia* spp. Prices of imported fruit trees averaged about $5.25 per tree.

Annually, domestic producers market about 20 million fruit trees of these five genera, valued at approximately $105 million. Domestic tree prices range from $5 to $6 per tree.

Imported fruit trees, therefore, currently account for only about 1.5 percent of fruit trees available in the U.S. market. We anticipate, as a result of this rule, that private French nurseries could export an additional 20,000 to 30,000 trees to the United States each year. This additional number of fruit trees would account for less than one-half of one percent of the U.S. supply. Furthermore, these additional fruit tree imports from France probably would compete directly with imports from The Netherlands, thus lessening the impact on the total domestic supply. We anticipate, therefore, that this proposed rule would not have a significant economic impact on total domestic fruit tree supply and thus would not have a significant economic impact on domestic fruit tree producers or other small entities.

Also, we have determined, using the Small Business Administration definition of small business (having 100 or fewer employees), that there are currently about 9,097 small retail nurseries and 11,347 wholesale shippers of flowers and nursery stock in the United States. We expect that these small businesses may benefit, if only slightly, from this rule. They would gain access to a greater variety of imported fruit trees, possibly at lower prices.

We are also proposing to remove the port of Laredo, TX, from the list of ports with plant inspection stations. About 400 million plants are imported through plant inspection stations into the United States annually. Only 24 shipments of 21,429 plants (less than one percent of 400 million) were imported through the plant inspection station at Laredo in 1993. In view of the low volume of plants imported into the United States through the Laredo plant inspection station, we do not believe that this rule would have a significant economic effect on businesses or other entities, large or small. Moreover, any plants requiring written permits and previously imported through Laredo could be diverted to the ports of Brownsville or El Paso, TX, which still retain plant inspection stations.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. Section 319.37–5 would be amended as follows:

a. In paragraph (b)(1), the first sentence would be amended by removing the reference to ''(b)(2)'' and adding a reference to ''(b)(3)'' in its place.

b. Footnote 7 and its reference would be removed.

c. Paragraph (b)(2) would be redesignated as paragraph (b)(3) and a new paragraph (b)(2) would be added to read as set forth below.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(b) * * *

(2) Species of *Prunus* not immune to plum pox virus (species other than *P.* avium, *P.* cerasus, *P.* effusa, *P.* laurocerasus, *P.* mahaleb, *P.* padus, *P.* sargentii, *P.* serotina, *P.* serrula, *P.* serrulata, *P.* subhirtella, *P.* yedoensis, and *P.* virginiana) and grown in Belgium, France, Germany, Great Britain, or The Netherlands may be certified only from the government operated nurseries (research stations) where the original parent stock is indexed for the appropriate national fruit tree certification program.

* * * * *

§§ 319.37–6, 319.37–7, 319.37–8, and 319.37–13 [Amended]

3. Footnotes 8 through 12 and their references would be redesignated as footnotes 7 through 11.

§ 319.37–14 [Amended]

4. In § 319.37–14, paragraph (b), under the list of ports of entry in Texas, the asterisk immediately preceding the entry for Laredo would be removed.

Done in Washington, DC, this 7th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6098 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–94–008]

Pork Promotion, Research, and Consumer Information Program—Change in Requirements for Annual Financial Audits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and termination order.

SUMMARY: This proposed document would terminate the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing requirements for submission of annual financial reports to the National Pork Board (Board) by organizations that receive less than $10,000 in annual distributed assessments; and issue new requirements in the regulations to implement the Order provisions. The new requirements would raise the minimum annual revenue requiring a certified public accountant audit from $10,000 to $30,000. The proposed change would facilitate the cost-effective preparation and submission of annual financial reports.

DATES: Comments must be received by April 12, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2624–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2624, South USDA Building, 14th and Independence Avenue SW., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

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

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

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

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

This proposed action would allow State Pork Producer Associations (SPPAs) that receive less than $30,000 in assessments annually to submit unaudited annual financial statements to the Board.

Most SPPAs would be classified as small businesses under the RFA. Raising the minimum dollar amount of distributed annual assessments that would trigger the requirement that a SPPA must submit an audited annual financial statement from $10,000 to $30,000, would minimize the cost of preparing annual financial reports for smaller SPPAs. The cost savings would result in increased funds available for financing promotion and research programs.

For these reasons the Administrator of AMS has determined that this proposed action will not have a significant economic effect on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessments on import porcine animals, pork, and pork products. That rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986. The Order is administered by the 15-member Board established pursuant to § 1230.50 of the Order.

Section 1230.74(b) of the Order requires that organizations that receive distributions of funds from the Board shall furnish the Board with an annual report audited by a certified public accountant (CPA) of all funds distributed to them.

There are 45 SPPAs as defined in § 1230.25 who receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72 (a) and (b). However, § 1230.74(c) provides that SPPAs that receive less than $10,000 in such annual distributions may submit to the Board annual, unaudited financial

statements prepared by State association staff members or individuals who prepare annual financial statements, provided that such statements are certified by two members of the State association. In addition, State associations that receive less than $10,000 annually must submit to the Board a CPA audited financial statement at least every 5 years. Financial statements of SPPAs that receive less than $2,000 annually in distributed assessments are audited by the Board.

The annual minimum dollar amounts of distributed assessments of $10,000 and $2,000 referenced above were established effective August 11, 1988 (53 FR 30243). These minimum dollar requirements were established to enable the smaller SPPAs that receive relatively smaller amounts of annual assessments to minimize the cost of CPA audits, which could represent a significant proportion of their total assessments.

Since then, the annual amount of assessments distributed by the Board to the SPPAs has increased as a result of an increase in the assessment rate effective December 1, 1991 (56 FR 51635), and some annual increases in domestic hog prices and in the number of hogs marketed. Consequently, it is the Board's view that the minimum dollar amount now is not high enough to enable a sufficient number of the smaller SPPAs to minimize the costs of preparing and submitting annual financial reports and thus have additional funds available to finance promotion and research projects.

The amount of annual assessments distributed to the 45 SPPAs in 1993 ranged from less than $1,000 to nearly $1.4 million. Seventeen State associations received less than $30,000, and four of those State associations received less than $2,000. To minimize the costs of CPA audits for the 13 State associations whose annual assessments are more than $2,000, but less than $30,000, the Board has recommended that the annual minimum dollar amount of distributed assessments that triggers the requirement of an annual CPA audit be increased from $10,000 to $30,000. The provision that the Board audits financial statements of SPPAs that receive less than $2,000 in annual distributed assessments would remain unchanged.

Since the establishment in 1988 of the initial minimum dollar amount of assessments for which a CPA audit is required, neither the Board nor the Department has encountered any problems with SPPAs preparing and submitting financial statements or the safeguarding of assessments. Accordingly, based on the Board's findings and its recommendations discussed above, we propose that the provisions of § 1230.74(c) of the Order containing the requirements for the SPPA's submission of annual financial audits to the Board be terminated.

Further, we propose that the requirements for submission of annual audits be revised based on the Board's recommendations and published in the rules and regulations implementing the Order. The revised requirements would provide that SPPAs that receive less than $30,000 in assessments would be required to submit unaudited financial statements to the Board. The other requirements of § 1230.74(c) would remain unchanged.

List of Subjects in 7 CFR Part 1230

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

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

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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

Authority: 7 U.S.C. 4801–4819.

2. In § 1230.74, paragraph (b) is revised to read as follows:

§ 1230.74 [Amended]

* * * * *

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

* * * * *

3. A new § 1230.115 would be added to Subpart B—Rules and Regulations, to read as follows.

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

Dated: March 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–6096 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–23]

Steve Gannis, Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–20–23) from Steve Gannis. The petition is being denied on the basis that the proposed action is not necessary because: current public dose limits adequately protect the health and safety of the public; the requirement that doses are as low as is reasonably achievable (ALARA) provides an ample margin of safety; and the proposed 1 mrem/yr limit is not supported by the recommendations of the International Commission on Radiological Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), or Presidential guidance.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Office of Nuclear Regulatory Research, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, telephone (301) 415–6215.

SUPPLEMENTARY INFORMATION:

The Petition

By letter dated January 8, 1994, Mr. Steve Gannis filed a petition for rulemaking with the NRC. The petitioner requested that the NRC reduce the limit for radiation dose to members of the public from the current 100 mrem/yr to 1 mrem/yr.

As a basis for the requested action, the petitioner cited the NRC policy statement on radiation doses that should be considered ''Below Regulatory Concern'' (BRC)(issued July 3, 1990; FR 27522, and withdrawn August 24, 1993; 58 FR 44610). Table 1 (July 3, 1990; 55 FR 27527 and 55 FR 27232) of that policy statement shows that if a person received the maximum allowable dose every year of the average 70-year life-span, he or she would have an additional 1 in 285 chance of death from cancer as a result of that dose. The petitioner further contends that non-fatal cancers would result at the same rate.

Public Comments on the Petition: Summary and Analysis

On April 14, 1994 (59 FR 17746), the NRC published a notice of the receipt of a petition for rulemaking in the **Federal Register**. Interested persons were invited to submit written comments concerning the petition by June 28, 1994. The NRC received 34 letters of comment from 30 individuals in response to the notice. Two commenters submitted addenda to their comments which were docketed separately. These are summarized in Table 1. Table 1.

TABLE 1

Comments	Category	For	Against
6	Individuals	4	2
5	Radiation Protection Professional Organizations Representatives.	.....	5
12	Environmental Group Representatives.	11	1
7	NRC Licensee Representatives.	.....	7

Comments in Favor of the Petition

Several commenters in favor of the petition gave no reasons for their support. These commenters only repeated the position in the petition. One commenter believed that no more than 2.5 mrem/yr limit was reasonable. One commenter said that only a zero dose limit was acceptable. Another commenter said that having reviewed the application for a low-level waste storage facility, it is evident that 1 mrem/yr is achievable for that facility and, therefore, reasonable for all facilities under NRC jurisdiction. Many of those who commented in support of the petition stated that they were appalled that NRC would condone the thousands of unnecessary deaths caused each year by doses to members of the public from exposure to NRC-licensed material.

NRC Response

None of the commenters in favor of the petition presented any information that was convincing concerning the need for a lower dose limit for members of the public. Annual doses to members of the public from natural and man-made sources are summarized in Table 2 (from NCRP Reports, Numbers 92, 93, 94, and 95).

TABLE 2

Source	Average annual dose	
	in mSv	mrem
Naturally occurring radon	2.0	200.0
Other naturally occurring	1.0	100.0
All occupational exposures	0.009	0.9
Nuclear fuel cycle	0.0005	0.1
Other consumer products	0.1	10.0
Diagnostic medical x-rays	0.39	39.0
Nuclear medicine	0.14	14.0
Total	3.64	364.0

Inspection data since 1982 shows that effluents and direct radiation dose rates continue to decline. As doses to members of the public are calculated from these, it is reasonable to assume that public doses have continued to decline as well.

While those who live nearest to NRC-licensed facilities are in principle allowed to receive up to the limit of 100 mrem/yr, most receive only a small fraction of this. The reason for this is that ALARA programs in place to supplement the dose limit result in a system of dose control which achieves doses significantly below the limit. As a consequence of this approach, the average dose to most members of the public from NRC-licensed facilities is well below 1 mrem/yr. Naturally occurring radioactivity is responsible for an average of 300 mrem/yr. In some areas, the dose from naturally occurring radioactivity is considerably higher (up to 900 mrem/yr according to NCRP Report No. 93). The ICRP, in its 1990 recommendations on dose limits in Report Number 60, confirmed that there is no new biological evidence that suggests that there should be a reduction in the limit for members of the public. The ICRP recommendation for dose to members of the public is 100 mrem/yr with certain provisions for deviations up to 500 mrem/yr. The NCRP reached the same conclusions in Report Number 116.

One commenter stated that the Environmental Protection Agency (EPA) limit for members of the public is only 10 mrem/yr. Therefore, the NRC limit of 100 mrem/yr does not protect the health and safety of the public. However, 10 mrem/yr is the EPA Clean Air Act limit for dose from a single pathway of exposure; namely, the dose a member of the public might receive from airborne releases of radioactive material from a facility. Members of the public might receive doses from other pathways as well, including radioactive material in food, water, on the ground, and in the soil, and direct radiation from the facility in which the radioactive material is stored or used. Presidential Guidance to Federal Agencies on dose limits for Public Exposure (May 18, 1960; 25 FR 4402), signed by former President Eisenhower, recommends a value of 500 mrem/yr for all pathways. This guidance is currently under consideration for revision and is expected to be revised to 100 mrem/yr from all pathways (see proposed revision published December 23, 1994 (59 FR 66414). NRC's limit of 100 mrem/yr from all pathways, from licensed and unlicensed sources, under the control of the licensee, including the

provision that any dose must be as low as is reasonably achievable, has the effect of being at least as protective as EPA regulations. In a survey conducted by the EPA to determine if NRC licensees were releasing radioactive materials to the environment in excess of EPA Clean Air Act limits, the EPA found that none of the NRC licensees surveyed had airborne effluents resulting in doses greater than 10 mrem/yr and the vast majority resulted in doses less than 1 mrem/yr to the member of the public likely to receive the highest dose.

Comments Opposed to the Petition

Commenters opposed to the petition presented a variety of reasons for their opposition. Most commenters stated that some current uses of radioactive materials could not continue under a 1 mrem/yr limit for members of the public. Further, some of the commenters stated that it would be impossible to demonstrate compliance with a limit so low that it could not be measured. Many commenters stated that there would be no significant increase in the protection of public health and safety. Other commenters concluded that the lower limit would result in a significant decrease in protection of the health and safety of the public. Some commenters came to this conclusion based on the estimated risks from effluents, waste, and radiation dose from alternate methods for production of electric power (e.g., coal, oil). Other commenters based the conclusion on the increased risk from surgical procedures and alternate chemical treatments for patients now treated with radioactive materials. Some commenters argued that economic considerations would preclude certain uses of radioactive material such as some medical uses. Therefore, the mortality risk from certain cancers would be much higher without the use of radioactive materials in treatment. Radioactive treatments performed to reduce pain and suffering in the last months of life for many cancer patients would also have to be stopped.

Many commenters opposed to the petition believed that the risk was exaggerated in the petition. They stated that the risk estimate referenced by the petitioner assumed that every individual would receive the maximum allowable dose every year of his or her life. Some commenters believed it inappropriate to use the conservative linear non-threshold model to extrapolate from doses between a few thousand mrem and millions of mrem, delivered in a fraction of a second, to the 100 mrem/yr limit. They believed it unreasonable to give no consideration to possible repair mechanisms or to the existence of any tolerance to radiation dose. Further, commenters contended that licensees must demonstrate compliance with the limit for members of the public by assuming that a member of the public is present at the location of highest dose rate, 24 hours a day, 365 days a year. The commenter therefore concluded that the actual risk is much smaller than the petitioner believes.

Most commenters opposed to the petition cited the recent recommendations of both the ICRP and the NCRP. Both organizations recommend that dose to members of the public not exceed 500 mrem in any one year and not average more than 100 mrem/yr. NCRP states that a dose of 500 mrem in a year is not especially hazardous if the same group does not receive that dose year after year.

One commenter compared 1 mrem/yr exposure to common radiation sources. Some of the examples given were: (1) Flying from New York City to Los Angeles exposes each passenger and crew member to 5 mrem; (2) a one week Colorado ski trip raises your annual exposure by 11 mrem; and (3) sleeping in bed with another person exposes each person to 0.1 mrem/yr from exposure to radioactive material in the other person's body. This commenter argued that radiation is the most studied hazard agent on earth. This commenter stated that after 99 years and billions of research dollars, no statistically significant negative effects of low levels of radiation have been shown in well controlled studies, and in fact, some studies suggest that there may be benefits from chronic, low level radiation exposure, possibly because, by stimulating enzyme production, the organism is protected from damage by stronger radiation and toxic chemicals. This commenter's argument is based, in part, on the observation that background radiation levels in Colorado are about twice that of the rest of the United States, yet cancer rates are tied for the third lowest in the nation.

NRC Response

For the reasons stated as the basis for the denial, the NRC agrees with those commenters who were opposed to the petition.

Reasons for Denial

The NRC has considered the petition, the public comments received, and other related information and has concluded that the issues raised by the petition are insufficient to justify rulemaking to reduce the limit for members of the public. The following is a discussion of the details of that conclusion.

The primary concern of the petition is the perception that the 100 mrem/yr limit for radiation exposure from radioactive sources under the control of NRC licensees poses an unacceptable risk to the population of the United States. In 1994, the ICRP Main Commission fully discussed the issue of dose limits for members of the public together with the statements to the 1994 United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). The ICRP confirmed that there was no new biological evidence that suggested that there should be a revision to the cancer risk estimates in ICRP Publication 60 and no reason to revise the recommendation that the average dose over a five year period not exceed 100 mrem/yr for members of the public (allowing for infrequent exposures up to 500 mrem/yr). The NCRP examined the UNSCEAR 1988 report, the report by the National Academy of Sciences/National Research Council Committee on the Biological Effects of Ionizing Radiation (BEIR V) (NAS/NRC, 1990), and the recommendations of the ICRP and issued recommendations that United States regulatory agencies establish limits for exposure to man-made radiation sources by members of the public to an annual average not to exceed 100 mrem/yr with allowances for infrequent exposures up to 500 mrem/yr.

The petitioner contends that the NRC limit of 100 mrem/yr doubles the average background radiation dose to which members of the public are exposed. In fact, the NRC system of dose control includes the ALARA concept that doses should be controlled below the dose limits and to levels which are as low as reasonably achievable. As a consequence, the actual doses from licensed activities are only a very small fraction of the annual background dose to members of the public which averages 300 mrem/yr in the United States.

The petitioner states that ''Federal Government standards on how much cancer can be caused among the public by cancer-causing pollutants and contaminants generally permit, at most, approximately 1 cancer per million people.'' However, the EPA National Emission Standards for Hazardous Air Pollutants (NESHAPS); Radionuclides (54FR51655) states that ''a principle that accompanies these numerical goals is that the state of art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in

deciding how numerical risk estimates are considered with respect to these goals.'' The NESHAPS standard for emissions of radioactive material from NRC licensed facilities is 10 mrem/yr for the air effluent release pathway alone. While the results of the 1993 reports to EPA have not been provided to NRC, a survey of NRC licensed facility air emissions performed by EPA in 1992 revealed that no NRC licensed facility surveyed exceeded that value. Almost all of the facilities surveyed in 1992 had air effluents which resulted in doses an order of magnitude lower for the maximally exposed individuals.

Taking these considerations into account, with respect to reducing the radiation dose limit to members of the public from 100 mrem/yr to 1 mrem/yr, the petition fails to recognize the net effect of the NRC's system of dose control and the role played by the dose limit and ALARA programs.

When these are taken into account, NRC's judgment is that the public is adequately protected, the health risks from NRC licensed activities are low, and no change in basic radiation protection standards, as petitioner suggests, is warranted.

Dated at Rockville, Maryland, this 2nd day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–6069 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed amendments.

SUMMARY: The NCUA Board is proposing amendments to its regulation regarding the appraisal of real estate, adopted pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The proposed amendments simplify compliance with regulatory requirements for credit unions by changing provisions of the appraisal regulation that govern: the publication of the Uniform Standards of Professional Appraisal Practice; minimum appraisal standards; appraisals to address safety and soundness concerns; unavailable information; additional appraisal standards developed by credit unions; and appraiser independence. The proposed amendments should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

DATES: Comments must be postmarked or received by May 12, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or via NCUA's electronic bulletin board to Becky Baker at 703–518–6480.

FOR FURTHER INFORMATION CONTACT: Kent Buckham, Deputy Director, (703) 518–6360, Herbert Yolles, Director, Department of Risk Management, Office of Examination and Insurance, (703) 518–6360 or Michael McKenna, Staff Attorney, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 et seq., directed NCUA and the other financial institution regulatory agencies to publish appraisal rules for federally related real estate transactions within the jurisdiction of each agency. Section 1121(4) of FIRREA, 12 U.S.C 3350(4), defines a federally related transaction as a real estate-related financial transaction that, among other things, requires the services of an appraiser. A real estate-related financial transaction is defined as any transaction that involves (i) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities. *See* 12 U.S.C. 3350(5).

In July of 1990, the Board published regulations to meet the requirements of Title XI of FIRREA. *See* 55 FR 30199, July 25, 1990. The Board recognized that not all real estate-related financial transactions would require an appraisal. Accordingly, in the original appraisal regulation, NCUA did not require a state-certified or -licensed appraiser for real estate-related transactions having a transaction value less than or equal to $50,000. In July of 1993, the Board raised the de minimus amount for an appraisal performed by a state-certified or -licensed appraiser to $100,000 (*See* 58 F.R. 40040, July 27, 1993). The dollar threshold was raised because NCUA had not found any evidence indicating that there had been a significant increase in the defaults on real estate-related loans of less than $50,000 and that the increase would not represent a threat to the safety and soundness of credit unions but rather would reduce unnecessary costs and paperwork requirements.

Recently, the other federal financial institution regulatory agencies [1] have increased the threshold to $250,000. *See* 59 FR 29482, June 7, 1994. The Board has considered whether the de minimus level should be increased for federally-insured credit unions. At this time, the Board does not perceive a need to increase the threshold. Many credit unions do not have the on-staff expertise to prepare appraisals. In addition, although credit unions are well capitalized, they are generally much smaller than other financial institutions. As a result, the relative size of an average real estate loan to capital is generally much higher for a credit union, which translates to much greater relative risk. A major portion of the losses to the National Credit Union Share Insurance Fund in the past ten years has been associated with real estate lending.

For credit unions that do engage in real estate lending, the greatest single risk protection they can obtain is a licensed or certified appraisal to support the loan-to-value ratio. The current thresholds of $100,000 for residential real estate and $50,000 for commercial property are sufficiently high to preclude most home equity or second trust lending from the appraisal requirement, but are low enough to ensure that professional appraisals are obtained for higher-dollar value real estate lending. Therefore, the Board is not proposing to increase either of these dollar thresholds. However, the Board believes that the appraisal regulation can be revised to provide clarity and ease the regulatory burden on credit unions for some categories of transactions.

B. Proposed Amendments

While in most cases an appraisal is an essential part of a sound underwriting decision, the Board believes that NCUA should not require Title XI appraisals where they impose costs without significantly promoting the safety and soundness of credit unions or furthering the purposes of Title XI of FIRREA. Accordingly, the Board is proposing to amend its appraisal regulation to clarify

[1] The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

and expand the circumstances in which a Title XI appraisal is not required.

It is also NCUA's experience that the current minimum standards applicable to federally related transactions and requirements concerning the independence of appraisers can be simplified without significantly affecting the reliability of Title XI appraisals. Therefore, the Board is proposing to amend the appraisal regulation to eliminate standards that parallel standards in the Uniform Standards of Professional Appraisal Practice (''USPAP'') promulgated by the Appraisal Standards Board of the Appraisal Foundation. In addition, the Board is proposing to amend the regulation concerning appraiser independence to permit credit unions to use appraisals prepared for other financial service institutions. The Board also proposes to simplify compliance with regulatory requirements for both credit unions and appraisers by changing provisions of the appraisal regulation that govern: (i) publication of USPAP; (ii) unavailable information; (iii) appraisals to address safety and soundness concerns and (iv) additional appraisal standards developed by credit unions. The proposed changes should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

1. Exemptions

The ''Abundance of Caution'' Provision

The Board proposes to amend the regulation to clarify and expand the scope of the exemption for real estate liens taken in an ''abundance of caution.'' NCUA's appraisal regulation currently provides that an appraisal is not required when a lien on real estate has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. *See* 12 CFR 722.3(a)(2).

NCUA's experience with implementing the appraisal regulation indicates that the existing abundance of caution exemption has been interpreted too narrowly. Therefore, to emphasize the broader scope of the abundance of caution exemption, the Board proposes to delete the word ''solely'' from the current exemption. However, this amendment would still not allow a credit union to use this exemption when there is a change to the terms of the loan because the credit union also received a lien on real estate.

Liens for Purposes Other Than the Real Estate's Value

As defined in NCUA's Regulations, an appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of real estate. *See* 12 CFR 722.2(a). When the market value of the real estate as an individual asset is not part of the credit union's decision to take a lien against real estate, no purpose is served by requiring the institution to obtain an appraisal. The Board is proposing a new exemption for transactions in which a credit union takes a lien on real estate for a purpose other than the value of the real estate. On occasion a credit union takes a real estate lien to protect the legal rights to other collateral and not because of the value of the real estate as an individual asset. For instance, where the collateral for a loan is a small business, a credit union may take a lien against the land and improvements in order to be able to sell the entire business as a going concern if the borrower defaults. Similarly, in lending associated with agriculture, credit unions may take a lien against the real estate upon which the growing crops sit to ensure their access to the agricultural product.

Requirements for Renewals, Refinancing and Other Subsequent Transactions

The Board is proposing to clarify the exemption for renewals, refinancings, and other transactions resulting from an existing extension of credit to simplify the conditions under which the exemption applies. NCUA's appraisal regulation currently provides that an appraisal is not required for a subsequent transaction that results from a maturing extension of credit if: (i) The borrower has performed satisfactorily according to the original terms; (ii) no new monies are advanced other than as previously agreed; (iii) the credit standing of the borrower has not deteriorated; and (iv) there has been no obvious and material change in the market conditions or physical aspects of the property which would threaten the credit union's collateral protection. *See* 12 CFR 722.3(a)(4). It has been NCUA's experience that the current exemption may not provide sufficient flexibility to credit unions and borrowers when a transaction is refinanced before its maturity. This is especially true when the member is seeking a more favorable interest rate. The proposed amendment would exempt a subsequent transaction provided no new monies are advanced other than funds necessary to cover reasonable closing costs and there has been no obvious and material change in the market conditions or physical aspects of the property which would threaten the credit union's collateral protection. This exemption would not be applicable if a member refinances a mortgage with a new lender.

Transactions Involving Real Estate Notes

The Board is proposing to amend the exemption regarding the purchase of real estate-secured loans, loan participations, pooled loans, interests in real property, and mortgage-backed securities. The proposed amendment would allow credit unions to purchase, sell, invest in, exchange, or extend credit secured by real estate notes or interests in real estate without obtaining a new Title XI appraisal if each note or real estate interest is supported by an appraisal that meets the regulatory appraisal requirements for the institution at the time the real estate-secured note was originated. (The transaction would, of course, have to meet other statutory and regulatory requirements applicable to federally-insured credit unions.) The current exemption simply refers to the purchase of these interests. In addition, the Board is proposing to change the text of this exemption to more clearly state the appraisal requirements that the underlying notes must meet.

The Board believes that the proposed amendment would serve federal public policy interests by helping to ensure that the appraisal regulation does not unnecessarily inhibit secondary mortgage market transactions that involve real estate-secured loans and real estate interests. The proposed amendment would make clear that a credit union need not obtain a new Title XI appraisal for loans originated before the effective date of NCUA's regulation in order to buy or sell them in the secondary mortgage market.

Transactions Insured or Guaranteed by a United States Government Agency or United States Government Sponsored Agency

NCUA's appraisal regulation currently provides that loans insured or guaranteed by an agency of the United States government are exempt from NCUA's appraisal requirements. *See* 12 CFR 722.3(a)(6). The Board is proposing to amend this provision in the regulation by deleting the requirement that the transaction be supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency. In order to receive the insurance or guarantee, the transaction must meet all underwriting

requirements of the insurer or guarantor, including real estate appraisal or evaluation requirements. The Board believes that the standards of these loan programs are sufficient to protect the safety and soundness of credit unions.

Transactions that Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

NCUA proposes to not require a Title XI appraisal for any transaction that meets the qualifications for sale to any United States government agency or government sponsored agency. The Board believes that the appraisal standards of U.S. government agencies or government sponsored agencies established to maintain a secondary market in loans are sufficient to protect federal financial and public policy interest in the loans those government or government sponsored agencies purchase. The Board also believes that compliance with these standards will protect the safety and soundness of credit unions. By referring to any U.S. government agency or U.S. government sponsored agency, the proposed amendment would include not only loans sold to federal agencies, but also any transaction that meets the qualifications for sale to agencies established or chartered by the federal government to serve public purposes specified by the U.S. Congress. These government sponsored agencies are:

* Banks for Cooperatives.
* Federal Agricultural Mortgage Corporation (Farmer Mac).
* Federal Farm Credit Banks.
* Federal Home Loan Banks (FHLBs).
* Federal Home Loan Mortgage Corporation (Freddie Mac).
* Federal National Mortgage Association (Fannie Mae).
* Student Loan Marketing Association (Sallie Mae).
* Tennessee Valley Authority (TVA).

If a federally insured credit union is otherwise authorized to originate, hold, buy or sell transactions that meet the qualifications for sale to any U.S. government agency and the above listed government sponsored agencies, this proposal would allow them to do so without obtaining a separate appraisal conforming to NCUA's Regulations. The Board believes that permitting credit unions to follow these standardized appraisal requirements, without the necessity of obtaining an appraisal or appraisal supplement, will increase a credit union's ability to buy and sell these loans and also their liquidity if necessary.

2. Appraisals to Address Safety and Soundness Concerns

The Board is proposing to amend its regulations to clarify that the agency may require Title XI appraisals to address safety and soundness concerns. Under this provision, NCUA could require appraisals where real estate-related financial transactions present greater-than-normal risk to individual credit unions. For example, NCUA may require a troubled credit union to obtain an appraisal for transactions below the threshold level. This amendment would simply and explicitly clarify NCUA's current authority.

3. Minimum Appraisal Standards

The Board is proposing to reduce the number of minimum appraisal standards applicable to Title XI appraisals for federally-related transactions from the thirteen appraisal standards found in § 722.4(a) of NCUA's Regulations (12 CFR 722.4(a)) to five and eliminate the current prohibition on the use of the USPAP Departure Provision in connection with federally-related transactions.

Title XI of FIRREA states that each federal financial institution regulatory agency shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally-related transactions under the jurisdiction of each such agency. These rules require, at a minimum that: (i) Real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the Appraisal Standards Board of the Appraisal Foundation; and (ii) that such appraisals shall be written appraisals. Under Title XI, each agency may require compliance with additional standards if it makes a determination in writing that such additional standards are necessary in order to properly carry out its statutory responsibilities. *See* 12 U.S.C 3339.

At the time NCUA began drafting its appraisal regulation,[2] the Appraisal Standards Board was in the process of amending its appraisal standards. Because of uncertainty about the content of the standards and interpretations that would be promulgated by the Appraisal Standards Board, the Board included within its appraisal regulation thirteen minimum standards that paralleled existing or proposed USPAP standards, including compliance with USPAP. NCUA also prohibited the use of the USPAP Departure Provision in connection with federally-related transactions. The Departure Provision permits an appraiser to prepare an appraisal without complying with certain recommended provisions of the USPAP if the appraisal report is not rendered misleading.

Minimum Appraisal Standards and USPAP

The Board has gained considerable experience with the Appraisal Standards Board and its appraisal standards and believe that it is no longer necessary to include all the additional standards in its appraisal regulation. The Board believes that the Departure Provision of the USPAP may appropriately be used in connection with federally-related transactions. Therefore, the Board is proposing to simply require all appraisals for federally related transactions to: (i) Conform to generally accepted appraisal standards as evidenced by the USPAP; (ii) be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction; (iii) analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units; (iv) be based upon the definition of market value as set forth in the regulation; and (v) be performed by State licensed or certified appraisers.

The Board believes these five standards will simplify compliance with the appraisal regulation without affecting the usefulness of the Title XI appraisals prepared for federally related transactions. The proposed amendments would allow credit unions to make use of the USPAP's Departure Provision and eliminate several regulatory standards that parallel existing USPAP standards. Under these proposed standards, the USPAP is referenced but would no longer be part of NCUA's Regulations. This approach would no longer require NCUA to republish changes to the USPAP adopted by the Appraisal Standards Board, and thus references to USPAP in the regulation could be assumed to always refer to the most current edition. The Board believes this approach minimizes potential conflicts between an institution's duty to follow NCUA's appraisal requirements and an appraiser's professional obligation to follow the latest USPAP version. If the Board adopts this approach in the final rule, the USPAP provisions applicable

[2] NCUA coordinated with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision when it drafted its original appraisal regulation. All the federal financial institution regulatory agencies adopted substantially similar appraisal regulations in 1990.

to federally-related transactions will no longer be published as Appendix A to NCUA's appraisal regulation. Therefore, the Board is proposing to delete Appendix A from its appraisal regulation.

The Board would like to make clear that if this amendment is adopted in final, the principles of safe and sound lending may require credit unions to comply with stricter standards than the USPAP. Although the credit union has the primary responsibility for obtaining a Title XI appraisal that meets its needs, NCUA may by regulation or guidance identify USPAP standards that are inappropriate for federally related transactions. For example, the USPAP allows an appraiser to appraise property even though the appraiser may have a direct or indirect interest in the property, if the interest is disclosed in the appraisal report. However, the Board believes that federal financial and public policy interests are better served by requiring that an appraiser for a federally related transaction not have any direct or indirect interest, financial or otherwise, in the transaction or the property. This requirement is discussed further in the section addressing appraiser independence.

Departure Provision

The proposed minimum standards would also permit credit unions to use appraisals prepared in accordance with the USPAP Departure Provision for federally related transactions. The Departure Provision permits limited exceptions to specific guidelines in the USPAP. Appraisers preparing appraisals using the Departure Provision still must comply with all binding requirements of the USPAP and must be sure that the resulting appraisal is not misleading. The Board believes that if this amendment is adopted in final that credit unions should be allowed to determine, with the assistance of the appraiser, whether an appraisal to be prepared in accordance with the Departure Provision is appropriate for a particular transaction and consistent with principles of safe and sound lending. The proposed amendment would make clear that the written appraisal must contain sufficient information and analysis to support the credit union's decision to engage in the transaction. This would put credit unions on notice of their responsibility to have appraisals that are appropriate for the particular federally related transaction.

Deductions and Discounts

The Board is proposing to retain the current standard in the appraisal regulation regarding deductions and discounts. *See* 12 CFR 722.4(a)(8). The USPAP provision on this subject requires the appraiser to include a discussion of deductions and discounts only when it is necessary to prevent an appraisal from being misleading. The Board believes it is appropriate to emphasize the need to include an appropriate discussion of deductions and discounts applicable to the estimate of value in Title XI appraisals for federally related transactions. For example, in order to properly underwrite a loan, a credit union may need to know a prospective value of a property, in addition to the market value as the date of the appraisal. A prospective value of a property is based upon events yet to occur, such as completion of construction or renovation, reaching a stabilized occupancy level, or some other event to be determined. Thus, more than one value may be reported in an appraisal as long as all values are clearly described and reflect the projected dates when future events could occur.

The standard on deductions and discounts is intended to make clear that appraisers must analyze, apply and report appropriate discounts and deductions when providing values based on future events. In financing the purchase of an existing home, there typically would be no need to apply any discounts or deductions to arrive at the market value of the property since the credit union's financing of the project does not depend on events such as further development of the property or the sale of units in a tract development.

Remaining Standards

The Board is also proposing to retain the current standard in the appraisal regulation on market value that requires the appraisal to be based on the definition of market value in NCUA's Regulations. *See* 12 CFR 722.4(a)(2). Finally, the Board is proposing a new standard that makes clear that all appraisals for federally related transactions must be prepared by licensed or certified appraisers. This requirement is mandated by Title XI of FIRREA and is repeated in other parts of the appraisal regulation.

4. Elimination of the Provision on Unavailable Information

The Board is proposing to delete the current provision that requires appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. *See* 12 CFR 722.4(b). The USPAP currently requires appraisers to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading. *See* USPAP Standard Rule 2–2(k). Moreover, when information that may materially affect the estimate of the value is unavailable, the Board believes that generally accepted appraisal standards require appraisers to explain the absence of that information and its effect on the reliability of the appraisal. Therefore, the elimination of this provision would not result in a substantive change in the requirements applicable to appraisals for federally related transactions since the Board is proposing to require appraisals to conform to the USPAP.

5. Elimination of the Provision on Additional Appraisal Standards

The Board is proposing to delete the current provision that merely confirms the authority of credit unions to require appraisers to comply with additional standards. *See* 12 CFR 722.4(c). The regulation's minimum appraisal standards for federally related transactions do not prevent a credit union from requiring an appraiser to follow additional standards or provide addition information to satisfy the credit union's business needs and thus it is unnecessary to regulate this in the appraisal regulation.

6. Appraiser Independence

The Board is proposing to amend and clarify its appraisal regulation to permit the use of appraisals prepared for financial service institutions other than institutions subject to Title XI of FIRREA. NCUA's current appraisal regulation provides that fee appraisers must be engaged by the credit union or its agent. An exception to this requirement is permitted if the appraiser is directly engaged by another institution that is subject to Title XI of FIRREA. *See* 12 CFR 722.5(b).

The current provision was adopted to help ensure that appraisers would not be subject to conflicts of interest as a result of having been engaged by borrowers. However, the Board believes that the current provision is too restrictive. It requires a credit union to obtain a new appraisal if the borrower originally sought the loan from an institution that is not subject to Title XI of FIRREA and is not an agent of the credit union. There also has been uncertainty about the meaning of agent in these cases.

The Board proposes to permit a credit union to use an appraisal that was prepared for any financial services institution, including mortgage bankers. The appraiser would not be allowed to have a direct or indirect interest, financial or otherwise, in the property

or the transaction, and must have been directly engaged by the non-regulated institution. Further, the credit union would be required to ensure that the appraisal conforms to the requirements of the regulation and is otherwise acceptable. The prohibition on the credit union using an appraisal prepared for the borrower would remain in effect.

Age of Appraisal

Some have suggested that NCUA's appraisal regulation contain a maximum allowable age of an appraisal for use by a credit union. They believe that there should be a maximum age (time from date of the appraisal to date of the application of the loan) for an appraisal, but that the age should not be so short as to unnecessarily require another appraisal be prepared in the uncommon instance where a mortgage is refinanced within a reasonably short time or a credit union is using an appraisal prepared for another financial service institution. Hence, the Board realizes that any specific time period will not be appropriate in all situations. The Board has specifically decided to permit each institution to determine the allowable period for an appraisal, but recommends that any appraisal over six months old not be used.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments reduce regulatory burden and are less restrictive than current requirements. Overall, the Board expects the changes to benefit members and federally-insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss. In addition, most small credit unions do not offer real estate loans. Accordingly, the Board determines and certifies that the proposed rule is not expected to have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule will apply to all federally-insured credit unions. The proposed rule will reduce regulatory requirements for all federally-insured credit unions. The Board has determined that the proposed amendments would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed rule, if adopted, will decrease paperwork requirements for a credit union. The paperwork requirements will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the paperwork requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20530. Attn: Milo Sunderhauf. NCUA will publish a notice in the **Federal Register** once OMB action is taken on the submitted requirement.

List of Subjects in 12 CFR Part 722

Appraisals, Credit unions, State-certified and State-licensed appraisers

By the National Credit Union Administration Board on March 1, 1995.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA proposes to amend 12 CFR part 722 as follows:

PART 722—APPRAISALS

1. The authority citation for Part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101–73.

2. Section 722.3 is amended by revising the section heading, revising paragraphs (a) and (d) and adding a new paragraph (e) to read as follows:

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less except if it is a business loan and then the transaction value must be $50,000 or less;

(2) A lien on real property has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves an existing extension of credit at the credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction;

(6) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the requirements of this paragraph, if applicable, at the time of origination;

(7) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency; or

(8) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

* * * * *

(d) *Valuation Requirement.* Secured transactions exempted from appraisal requirements pursuant to paragraphs (a)(1) and (a)(5) of this section and not otherwise exempted shall be supported by a written estimate of market value, as defined in this part, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) *Appraisals to address safety and soundness concerns.* NCUA reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

3. Section 722.4 is revised to read as follows:

§ 722.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in § 722.2(f); and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

4. Section 722.5 is amended by revising paragraph (b) to read as follows:

§ 722.5 Appraiser Independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the credit union or its agent, and have no direct or indirect interest, financial or otherwise in the property or the transaction.

(2) A credit union also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution; if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or transaction; and

(ii) The credit union determines that the appraisal conforms to the requirement of this part and is otherwise acceptable.

Appendix A [Removed]

5. Appendix A to part 722 is removed.

[FR Doc. 95–5592 Filed 3–10–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–59–91]

RIN 1545–AQ86

Debt Instruments With Original Issue Discount; Contingent Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (FI–59–91), which was published in the **Federal Register** for Friday, December 16, 1994 (59 FR 64884). The proposed regulations relate to the tax treatment of debt instruments that provide for one or more contingent payments.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations (other than § 1.1275–6), Andrew C. Kittler, (202)622–3940, or William E. Blanchard, (202) 622–3950; concerning § 1.1275–6, Michael S. Novey, (202) 622–3900; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 1275 of the Internal Revenue Code.

Need for Correction

As published, the proposed rulemaking contains a typographical error that is in need of correction.

Correction of Publication

Accordingly, the publication of proposed regulations (FI–59–91), which was the subject of FR Doc. 94–30728, is corrected as follows:

On page 64885, column 1, in the preamble under the heading ''*Background*'', paragraph 2, line 6, the language ''February 4, 1994, the IRS published in'' is corrected to read ''February 2, 1994, the IRS published in''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–6028 Filed 3–10–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–118]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, by leaving the draw in the open position except for the passage of trains. The proposed change to these regulations are, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw bridge while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 12, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–118) and the specific section of this proposal of which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting

acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations governing the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, be changed to leave the bridge in the open position, except when a train is passing over the bridge. A bridgetender would be available only during the times of train crossings to close the bridge and, after the train had cleared, to reopen the bridge to navigation. There would not be a full-time bridgetender employed at the bridge.

The current regulations require the bridge to remain in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw opens on signal. The Albemarle and Chesapeake Railroad Company leases these tracks from Norfolk and Southern Railroad Company. The current schedule for the railroad bridge was used by Norfolk and Southern during the time they were operating their trains across the bridge. The Albemarle and Chesapeake Railroad Company has requested a change to these regulations.

The Albemarle and Chesapeake Railroad Company originally requested that the Coast Guard change the current regulations by allowing the draw to remain closed to navigation Monday through Friday, from 9 a.m. to 3 p.m., with openings only for emergencies. At all other times, the bridge would remain in the open position except for the passage of trains. This request was denied because the proposed hours of bridge closures were considered too restrictive to recreational and commercial navigation, since the bridge is located across the busy Atlantic Intracoastal Waterway—Alternate Route. The Coast Guard also received strong opposition from the boating community and the City of Elizabeth City. Coast Guard Auxiliarists provided data reflecting the number of boats that transit this waterway. In 1992, the number of boaters was 1,971 and in 1993, the number was 1,530, with the heaviest months occurring from April to October of each year.

As a result of the Coast Guard's denial of their request, the Albemarle and Chesapeake Railroad Company requested a meeting with the Coast Guard, Union Camp, the Mayor of Elizabeth City, and local Coast Guard Auxiliarists to discuss a new operating schedule for the railroad bridge.

Since the railroad company was not receptive to employing a full-time bridgetender, all in attendance agreed that the most acceptable schedule would be to leave the bridge in the open position, except for the passage of trains. This would eliminate the need for a full-time bridgetender; however, this proposed schedule would require the railroad company to employ a part-time bridgetender to operate the drawspan.

In developing this proposed schedule, the Coast Guard considered all views, and believes this proposed rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for passage of trains.

Regulatory Evaluation

This proposed action 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 and procedures of DOT is unnecessary.

Small Entities

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.833 is revised to read as follows:

§ 117.833 Pasquotank River

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–6031 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–117]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, at Chesapeake, Virginia, by leaving the draw in the open position except for the passage of trains. The proposed changes to these regulations are, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 12, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–117) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

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

Drafting Information: The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations for the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, in Chesapeake, Virginia, be changed to allow them to leave the bridge in the open position, except when a train is passing over the bridge. Since the bridge would be left in the open position, a bridge tender would only be available to close the bride for a train crossing, and, after the train cleared, to reopen the bridge to navigation.

The current regulations require the bridge to open on demand. These regulations require a full-time bridge tender. Leaving the bridge open, except for the passage of trains, alleviates the need for a full-time bridge tender.

The Albemarle and Chesapeake Railroad Company originally requested that the Coast Guard change the current regulations by leaving the draw closed to navigation, Monday through Friday, from 12 noon to 2:30 p.m., with openings only for emergencies. At all other times, the bridge would remain in the open position except for the passage of trains. This request was denied because of the proposed hours of bridge closures were considered too restrictive to recreational and commercial navigation, since the bridge is located across the busy Atlantic Intracoastal Waterway.

As a result of the Coast Guard's denial, the Albemarle and Chesapeake Railroad Company requested a meeting with the Coast Guard, Union Camp, the Mayor of Elizabeth City, and local Coast Guard Auxilarists to discuss a new operating schedule for the railroad bridge. Since the railroad company was not receptive to employing a full-time bridge tender, all in attendance agreed that the most acceptable schedule would be to leave the bridge in the open position, except for the passage of trains. This would eliminate the need for a full-time bridge tender; however, this proposed schedule would require the railroad company to employ a part-time bridge tender to operate the drawspan.

In developing this proposed schedule, the Coast Guard considered all views, and believes this proposed rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

Regulatory Evaluation

This proposed action 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 and procedures of DOT is unnecessary.

Small Entities

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has been determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.997, paragraph (g) is redesignated as (h) and a new paragraph (g) is added to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(g) The draw of the Albemarle & Chesapeake Railroad bridge, mile 13.9, in Chesapeake, Virginia, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

* * * * *

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–6032 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–266; FCC 95–80]

Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Further Notice of Proposed Rule Making,* the Commission proposes rules in response to the pioneer's preference directives contained in the legislation implementing domestically the General Agreement on Tariffs and Trade (GATT), as well as on its own motion. The objective of this proposal is to implement the GATT legislation's modifications to the Communications Act and to make additional changes to the pioneer's preference rules to increase their efficiency.

DATES: Comments are due March 29, 1995; reply comments are due April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making,* adopted February 28, 1995, and released March 1, 1995. 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, D.C. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Summary of Further Notice of Proposed Rule Making

1. In the *Notice of Proposed Rule Making* (*Notice*) in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether these rules should be repealed. In the *First Report and Order,* 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to three proceedings in which tentative pioneer's preference decisions had been issued; and in the *Second Report and Order,* adopted simultaneously with the *Further Notice of Proposed Rule Making,* modified certain rules to increase the efficiency of the pioneer's preference program.

2. The GATT legislation, enacted December 8, 1994, requires that the Commission complete by June 8, 1995, a rulemaking prescribing the procedures and criteria to be used in evaluating pioneer's preference requests accepted for filing after September 1, 1994. The legislation mandates that the Commission specify the procedures and criteria by which the significance of a pioneering contribution will be determined; that there be an opportunity for review and verification of the contribution by experts not employed by the Commission; and that the Commission use such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses. The GATT legislation also requires pioneer's preference licensees whose preference requests were accepted for filing after September 1, 1994 to pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Finally, the GATT legislation sunsets the pioneer's preference program on September 30, 1998.

3. In the *Further Notice of Proposed Rule Making,* the Commission proposes to establish a peer review process on a permanent basis under the direction of the Chief of its Office of Engineering and Technology. The Chief, OET, would select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are not employed by either the Commission or any applicant seeking a pioneer's preference in the same or similar communications service. The Commission's staff would evaluate on a case-by-case basis how much outside assistance is required.

4. With respect to the unjust enrichment directive of the GATT legislation, the Commission stated that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for pioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts, but that it remains concerned about the effect of competitive bidding on the pioneer's preference program. It said that in services in which competitive bidding is used to assign licenses, the need to guarantee a license may not be as strong as in services in which another

assignment method is used, and noted that there may be circumstances in which the guarantee of a license at or close to the market price may stimulate research such that the innovator receives certainty in obtaining financing to perform the necessary research and to pay for the license.

5. Accordingly, the Commission seeks comment on an additional showing that a pioneer's preference applicant would have to make to qualify for a preference in services in which licenses are awarded by competitive bidding. Specifically, it seeks comment on whether the applicant should have to demonstrate that the Commission's public rulemaking process inhibits the applicant from capturing the economic rewards of its innovation unless granted a pioneer's preference license; *i.e.*, whether the applicant must show that it may lose its intellectual property protection because of this public process. If this requirement were to be adopted, the applicant would have to demonstrate that it would be able to capture the rewards from its innovation only by being granted a guaranteed license.

6. With regard to determining which licenses are most reasonably comparable for purposes of the GATT legislation payment formula, the Commission proposes implementing this provision of the legislation on a case-by-case basis. However, it seeks comment on any standards for comparing licenses and excluding anomalous licenses, as well as comment on whether eligibility for installment payments should be limited to small businesses or other entities as has been done under the general auction rules.

7. In accord with the GATT legislation, the Commission proposes to sunset the pioneer's preference program on September 30, 1998. It also proposes to modify the pioneer's preference rules by limiting the award of preferences to services in which a new allocation of spectrum is required. Finally, it proposes to apply any rules adopted in response to the *Further Notice of Proposed Rule Making* to all pioneer's preference requests granted after adoption of these rules, except in proceedings in which tentative decisions have been made. The Commission stated that it will not issue final decisions in pioneer's preference proceedings that have not reached the tentative decision stage until after it has issued a Third Report and Order regarding final rules that will apply to pending requests.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6080 Filed 3–10–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 36, 42, 44, 46, 47, 49, 52, and 53

[FAR Case 94–790]

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Change of date for meeting on proposed rule.

SUMMARY: At 60 FR 11198; March 1, 1995, a proposed rule was issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the revised statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. Instead of meeting on the date given in that document, the FAR Council is rescheduling its public meeting at the GSA Auditorium in Washington, DC, for April 3, 1995.

The purpose of the meeting is to enable the public to present its views on the proposed rule, FAR case 94–790—Acquisition of Commercial Items, and to exchange ideas and opinions with respect to the implementation of the Act. Interested members of the public may obtain copies of the proposed rule from the FAR Secretariat, Room 4037, GSA Building, 18th and F Sts., NW, Washington, DC 20405, (202) 501–4755. The public is encouraged to attend this meeting and must provide, to the FAR Secretariat, a written statement on the views they would like to present not later than March 29, 1995. Organizations or groups with similar views should select a representative speaker.

DATES: The meeting will be held on April 3, 1995, at 1:00 p.m.

ADDRESSES: The meeting will be held at the GSA Auditorium, 8th & F Streets NW., First Floor, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Project Deputy for the Implementation of the Federal Acquisition Streamlining Act of 1994 at (202) 501–4547 or the FAR Secretariat, General Services Administration, (202) 501–0692.

Dated: March 7, 1995.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–5971 Filed 3–10–95; 8:45 am]

BILLING CODE 6820–34–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Initiation of Status Review for a Petition To List the Southern Population of the Walleye as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the southern population of walleye (*Stizostedion vitreum vitreum*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on January 26, 1995. Comments and materials should be submitted to the Service by May 12, 1995, to be considered in the 12-month finding.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield, Biologist, at above address (601–695–4900, ext. 25).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the southern population of the walleye (*Stizostedion vitreum vitreum*). The petition, dated August 20, 1994, was submitted by Robert R. Reid, Jr. of Birmingham, Alabama, and was received by the Service on August 22, 1994. The petition requested that the southern population of the walleye be emergency listed as endangered. The petitioner stated that the southern population of the walleye is a genetically distinct population, deserving of specific or subspecific rank, which merits listing because: (1) It has declined in the Tombigbee River drainage, (2) remaining populations in the Tombigbee River drainage are threatened by existing and proposed water projects, and (3) it is rare in other Mobile River Basin drainages in Alabama.

The Service has reviewed the petition, the literature cited in the petition, other literature, information available in the Service's files, and has consulted with knowledgeable fisheries biologists. On the basis of the best scientific and commercial information available, the Service finds the petition presents substantial information that listing this species may be warranted. Emergency listing is allowed under the Act whenever immediate protection is needed to prevent extirpation of a species. Based on currently available information, emergency listing is not needed for the southern population of walleye.

Electrophoretic analyses (Murphy 1990) and mitochondrial DNA comparisons (Billington *et al.* 1992) have confirmed the genetic uniqueness of the upper Tombigbee River population of walleye. Ongoing studies of walleye populations in the Mobile River basin drainages of Alabama have indicated that this distinct Gulf Coast strain of walleye extends into that State (Mike Mecina, University of Auburn, Alabama, pers. comm. 1994). The relationship of other Gulf Coast drainage populations of walleye (e.g., Apalachicola River, Florida, Georgia; Pearl River, Mississippi) to the Mobile River Basin population is unknown and needs further investigation.

Populations of walleye appear to be low in the Tombigbee River drainage of Mississippi. Recent reports of walleye are documented in several Tombigbee River tributaries in Mississippi, including the Buttahatchee River, Sipsey, Bull Mountain, Yellow, Luxapalila, Sucarnoochee, and Hashuqua Creeks (Dennis Riecke, Mississippi Department of Wildlife, Fisheries, and Parks, pers. comm. 1994). Current information on the distribution of walleye in the Mobile Basin drainages of Alabama is limited. Walleye collection localities within the past 10 years in Alabama include the Black Warrior, Alabama, Little Cahaba, Locust Fork, and lower Tallapoosa Rivers, and Euphappee, Oakmulgee, and Hatchet Creeks (Fred Harders, Alabama Department of Conservation, pers. comm. 1994; Malcolm Pierson, Alabama Power Company, pers. comm. 1994).

Service records indicate that potential walleye habitat throughout the Mobile River Basin may have been affected or eliminated due to impoundment of approximately 1,000 miles of river habitat, and/or by extensive stream channelization. Erosion due to headcutting, a proposed channelization project, and proposed impoundments pose additional threats to the population. Walleye appear to require clean, relatively swift streams for reproduction (Schultz 1971). Potential threats to stream habitat quality in the Mobile River Basin include various point source effluents (e.g. coal surface mining and sand/gravel mining), as well as sediments, nutrients, and toxicants from non-point runoff.

The Service solicits further information regarding occurrence and distribution of the species, threats to its continued existence, and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the southern population of the walleye. Of particular interest is information regarding:

(1) Genetic composition of other walleye populations in Gulf Coast drainages;

(2) Additional historic and current population data that may assist in determining range and long-term population trends;

(3) Pertinent information on biology and life history; and,

(4) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to populations of the southern walleye.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), the Service will prepare a 12-month finding.

References Cited

Billington, N., R.J. Barrette, and P.D.N. Hebert. 1992. Management implications of mitochondrial DNA variation in walleye stocks. North American Journal of Fisheries Management 12:276–284.

Murphy, B.R. 1990. Evidence for a genetically unique walleye population in the upper Tombigee River system of northeastern Mississippi. SFC Proceedings (22):14–16.

Schultz, C.A. 1971. Survey of the walleye population and related parameters in the Tombigee River system in Mississippi. Mississippi Game and Fish Commission Final Report, Project F–23.

Author: The primary author of this document is Paul Hartfield, Jackson, Mississippi, Field Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 26, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–6143 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 60, No. 48

Monday, March 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–190–5]

Animal Damage Control Program; Record of Decision Based on Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the public of the Animal and Plant Health Inspection Service's record of decision for the Animal Damage Control program. The decision is based on the final environmental impact statement for the program.

ADDRESSES: Copies of the final environmental impact statement on which the record of decision is based are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC;

Operational Support Staff, Animal Damage Control, APHIS, USDA, 4700 River Road, Riverdale, MD;

Eastern Regional Office, Animal Damage Control, APHIS, UDDA, Suite 370, 7000 Executive Center Drive, Brentwood, TN;

Denver Wildlife Research Center, Building 16, Denver Federal Center, Denver, CO; and

Western Regional Office, Animal Damage Control, APHIS, USDA, 12345 W. Alameda Parkway, Suite 313, Lakewood, CA.

Interested persons may obtain a copy of the final environmental impact statement by writing to Mr. William H. Clay at the address listed below under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. William H. Clay, Director, Animal and Plant Health Inspection Service, Animal Damage Control, Operational Support Staff, 4700 River Road Unit 87, Riverdale, MD 20737–1228, (301) 734–8281.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1990, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (55 FR 24597–24598, Docket No. 90–099) to inform the public of the availability of a draft environmental impact statement (EIS) for the Animal Damage Control program. The draft EIS evaluated environmental impacts associated with wildlife damage control activities.

On January 14, 1993, APHIS published a notice (58 FR 4404–4405, Docket No. 92–190–1) informing the public of our intention to make available a supplement to the draft EIS for the Animal Damage Control program; the supplement was made available through a **Federal Register** notice published on February 12, 1993 (58 FR 8252, Docket No. 92–190–2). We requested public comments on the supplement to the draft EIS for a 45-day period ending on March 29, 1993. On the last day of the comment period, we published a notice in the **Federal Register** (58 FR 16520, Docket No. 92–190–3) extending the comment period until April 28, 1993. All comments received on the draft EIS and its supplement were considered in the final EIS.

On May 6, 1994, APHIS published in the **Federal Register** (59 FR 23683–23684, Docket No. 92–190–4) a notice advising the public of the availability of the final EIS for the Animal Damage Control program. The final EIS addresses the function, methods of operation, and locations of the Animal Damage Control program and the biological, sociocultural, economic, and physical impacts of reasonable alternatives to the program.

This notice contains the agency's record of decision, based on the final EIS, for the Animal Damage Control program. This record of decision has been prepared in accordance with: (1) The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 7th day of March 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

The agency record of decision is set forth below.

United States Department of Agriculture; Animal and Plant Health Inspection Service

Record of Decision: Animal Damage Control Program; Final Environmental Impact Statement

Introduction

This decision is the culmination of the environmental impact statement (EIS) process for the Animal and Plant Health Inspection Service (APHIS), Animal Damage Control (ADC) program. The final programmatic EIS document underlying this decision develops at great length and specific detail the strategies, methods, and processes through which the mission of ADC is accomplished. Numerous examples (''decision model'' applications presented in Appendix N, for instance), of how the program has approached some of its environmental responsibilities in the past are provided. Information concerning categorizing classes of action and individual documentation requirements could not be specified in the final EIS because the development of APHIS regulations concerning compliance with the National Environmental Policy Act (NEPA) was not yet completed. Subsequently, the APHIS regulations have been published (60 FR 6000–6005, February 1, 1995) and became effective on March 3, 1995. ADC will fully comply with these implementation procedures and any amendments to those procedures.

The Council on Environmental Quality's (CEQ) regulations implementing NEPA tell decisionmakers what information must be included in records of decision. Section 1505.2 of the CEQ regulations provides that records of decision contain:

- A statement of what the decision is;
- The identification of all alternatives considered by the agency, including the environmentally preferable alternative(s);
- A discussion of factors (economic, technical, and agency statutory mission) and essential considerations of national policy balanced in the decisionmaking process and how each factor weighs in the decision; and
- An explanation of whether the decision (the alternative selected) is designed to avoid or minimize environmental harm and, if not, why not.

The final EIS prepared by ADC is programmatic in nature. The EIS process was undertaken to explore issues and alternatives associated with program implementation, to identify data elements and other information necessary to evaluate effects at the programmatic and project levels, and to assist in the development of a flexible framework within which effects of various alternatives may be considered in site-specific contexts that are consistent with the documentation and procedural requirements of NEPA.

Program Alternatives

The final EIS rigorously explored and objectively evaluated, in detail, five alternative strategies that may be utilized by program personnel in different site-specific settings. In addition, eight other alternatives that involved restructuring or broadly applied, single-focus approaches, were presented and briefly considered. The five alternative strategies considered in detail are:

- The current program (the integrated pest management alternative), which consists of various practices and techniques, including both nonlethal and lethal actions, that are available for formulating a damage control strategy consistent with applicable State and local requirements, cooperative agreements, and interagency arrangements
- A system of compensation, as a replacement for ADC program actions, to pay partially or fully, for agricultural losses due to damages by wildlife;
- No action, under which USDA–APHIS funded wildlife damage control activities would cease with no specified provisions for replacement measures—compensation or other;
- Use and recommendation of only nonlethal methods to control wildlife-caused damage, precluding the use or recommendation of any and all methods that are directly lethal to wildlife; and
- A requirement that practical nonlethal methods of wildlife damage control be recommended or used in each situation prior to recommending or using any lethal methods.

Integrated pest management (the current alternative) has been identified by ADC as both its ''preferred'' alternative and the ''environmentally preferable'' alternative.

A principal function of an EIS is its use by Federal officials, in conjunction with other relevant materials, to plan actions and make decisions. As a practical matter, the integrated pest management alternative includes nearly all animal damage control options and tools available to ADC officials at the project level. How these or other options will be developed and integrated efficiently into program planning and decisionmaking consistent with NEPA and other environmental mandates are addressed in the new APHIS NEPA implementing procedures. Specifically, ADC reaffirms its intention that nonlethal control methods as the means of achieving project goals will be considered, recommended, and, when appropriate, applied prior to recommending or using lethal methods (ADC Directive 2.101).

The APHIS Framework for Environmental Decisionmaking

The starting point for environmental decisionmaking by agencies of the Federal Government is NEPA. The CEQ implementing regulations require agencies to integrate the NEPA process into their planning and to establish procedures to facilitate compliance with the Act. The final EIS prematurely asserted that APHIS had new, finalized NEPA compliance procedures. In fact, as stated above, APHIS only recently promulgated its new NEPA compliance procedures (60 FR 6000–6005, February 1, 1995). The ADC program has adapted its planning and decisionmaking practices to these new procedures. ADC, in compliance with the APHIS Regulations, is structuring a cost-effective environmental compliance system that will be published in the APHIS *Environmental Manual*.

The programmatic EIS process has functioned as a catalyst to focus on environmental issues raised both by the public and internally and to provide environmental information to public officials and citizens before decisions have been made. For its part, ADC has sought a useful decisionmaking ''model'' (outlined in Chapter 2 of the final EIS and assessed in Appendix N) that is compatible with both its mission and NEPA. ADC will use this ''decision model'' process, in conjunction with the general outline of NEPA compliance contained in the final EIS, the CEQ regulations (40 CFR 1500, *et seq.*), the Department's NEPA implementing regulations (7 CFR 1b and 3100.40), and the APHIS implementing regulations (7 CFR 372, *et seq.*, 60 FR 6000–6005), as its system for compliance with NEPA. In this process, ADC also will assure continued compliance with all other environmental statutes and regulations, including section 7 of the Endangered Species Act, at the local level. The program is cooperating with the Forest Service, the Bureau of Land Management, other Federal and State agencies, and the public, to coordinate the environmental assessment process through which use of the decision model will be appropriately documented and applied. CEQ recently agreed to assist in this endeavor.

The ADC program will continue to assure that its environmental compliance processes comply with the new APHIS NEPA procedures. Consistent with CEQ's regulations implementing NEPA, the public has been informed and had ample opportunity to participate in the formation of APHIS' and ADC's overall environmental compliance system.

Decision and Rationale

Aspects of most of the alternatives analyzed in the final EIS are currently being used in specific situations in the United States or its Territories. Since this final EIS is programmatic in nature and national in scope, a single alternative as the sole, all-encompassing focus of the ADC program may not adequately cover all wildlife damage problems and situations. Therefore, my decision is to send forward to regional and local decisionmakers the viable alternatives discussed in the final EIS for consideration as management approaches, when appropriate, practical, and reasonable, in preparation of local and site-specific documents and actions. This approach provides a complete range of wildlife damage control strategies available as part of an overall integrated management approach. Application of appropriate methods will be determined following the processes defined in the ADC decision model (EIS, Chapter 2, pages 23–35) and completion of local analyses subject to the NEPA process.

Minimizing Environmental Harm

The final EIS developed a host of mitigation measures that would augment the numerous existing program policies, procedures, and continuing research efforts, to minimize or eliminate environmental impacts. These may be applied at virtually every level of consideration and for each

appropriate alternative strategy. Programmatically, ADC has proposed (and in some instances is already implementing) a number of measures, including:

- Environmental compliance training for supervisors and managers;
- The standardization of data collection and reporting;
- Consultation, monitoring, and periodic evaluations; and
- An outreach element, including publishing literature and providing training on the application of nonlethal wildlife damage control alternatives.

Many of the programmatic mitigation measures will be incorporated into ADC's site-specific environmental compliance documents and actions.

For possible mitigation at the local level, the final EIS listed 24 specific measures for consideration, for example:

- Placing greater emphasis on nonlethal animal damage control strategies and techniques;
- Insisting upon the use of more human capture devices and practices; and
- Proving nonlethal control tools to resource managers.

The complete listing provides a menu to which program decisionmakers may refer in various site-specific contexts.

Conclusions

In this decision, I have determined that:

- All currently feasible Animal Damage Control program alternatives have been adequately developed and explored, although the program intends to continue searching for other environmentally preferable means of achieving its mission;
- Program decisionmakers will appropriately consider any significant environmental impacts and the viable alternatives developed in the final EIS in the context of the NEPA process for local actions;
- An environmental compliance system, including APHIS' new NEPA compliance procedures and ADC's specific accommodation of such procedures, will be implemented immediately;
- ADC will use the decisionmaking model explained in Chapter 2 of the final EIS and will follow CEQ regulations and the USDA, APHIS, and ADC NEPA compliance procedures.
- A satisfactory environmental mitigation strategy at both the programmatic and local level has been developed and will be implemented, as appropriate.

Executed in Washington, D.C., this 7th day of March 1995.

Lonnie J. King,

Acting Administrator.

[FR Doc. 95–6097 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on March 28 and 29, 1995, at the Sheraton Portland Airport Hotel, 8235 N.E. Airport Way, Portland, Oregon 97230. The purpose of the meeting is to discuss the role of the committee in the implementation of the Northwest Forest Plan. The meeting will begin at 1:30 p.m. on March 28 and continue until 4:30 p.m. It will resume at 8:30 a.m. on March 29, concluding at 3:00 p.m. Agenda items to be covered include: (1) background on the Northwest Forest Plan; (2) introduction of members and general orientation; (3) operating guidelines and ground rules; (4) a summary of actions taken by the federal agencies regarding plan implementation; and (5) a discussion of topics to be addressed at future meetings. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled prior to adjourning on March 28 for brief oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: March 7, 1995.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 95–6057 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

PME–6 Southwest White Lake Shore Protection Demonstration Project

AGENCY: Natural Resources Conservation Service, formerly Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Southwest White Lake Shore Protection Demonstration Project, Vermilion Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, United States Department of Agriculture, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not necessary for this project.

This project concerns the stabilization and protection of the southwest shoreline of White Lake in Vermilion, Parish. The planned project work consists of planting emergent vegetation in shallow water at the lake's edge. As the vegetation becomes established, it will function as a buffer against the erosive wave energy created by the wide fetch of the lake and artificially high water levels. Shoreline erosion rates will be reduced and interior fresh marshes will remain protected from incorporation into White Lake.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is being conducted under the provisions of Public Law 101–646—Coastal

Wetlands Planning, Protection, and Restoration Act.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 95–6047 Filed 3–10–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 950120021–5021–01]

RIN 0693–AB12

Approval of Federal Information Processing Standards Publication 194, Open Document Architecture (ODA) Raster Document Application Profile (DAP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 194, Open Document Architecture (ODA) Raster Document Application Profile (DAP).

On January 28, 1994, notice was published in the **Federal Register** (59 FR 4032) that a Federal Information Processing Standard (FIPS) for Open Document Architecture Raster Document Application Profile was being proposed for Federal use.

NIST reviewed written comments submitted by interested parties and other available material. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard become effective September 1, 1995.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Frankie Spielman, (301) 975–3257, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

EXECUTIVE ORDER 12866: This FIPS notice has been determined to be ''not significant'' for purposes of E.O. 12866.

Dated: March 7, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 194

(Date)

Announcing the Standard for Open Document Architecture (ODA) Raster Document Application Profile (DAP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Open Document Architecture (ODA) Raster Document Application Profile (DAP), (FIPS PUB 194).

2. Category of Standard. Software Standard, Graphics.

3. Explanation. This Federal Information Processing Standard adopts the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 12064–1 International Standard Profile (ISP) FOD112, Open Document Format: Image Applications—Simple Document Structure—Raster Graphics content architecture, Part 1: Document Application Profile (DAP). This FIPS PUB defines three levels of conformance, the complete specification is in section 10.

ISO/IEC 12064–1 specifies the use of a subset of the ODA standard and, in this FIPS PUB, is referred to as the ODA Raster DAP. The ODA standard is defined in a joint ISO/IEC and International Telecommunications Union Telecommunication Standardization Sector (ITU–T) document ISO/IEC 8613–ITU–T Recommendation T.410 Series, Open Document Architecture (ODA) and Interchange Format.

The ODA standard supports the interchange of compound documents containing up to three types of contents: character (text), raster graphics, and geometric graphics. Developed by international standards organizations, the ODA standard specifies rules for describing the logical and layout structures of documents as well as rules for specifying character, raster graphics, and geometric graphics content of documents, thus providing for the interchange of complex documents. The ODA standard was developed primarily by the ISO/IEC Joint Technical Committee (JTC1) and ITU–T, formerly the Consultative Committee on International and Telegraph (CCITT).

A DAP is a functional subset of the ODA standard and facilitates the interchange of documents among different document systems by specifying the constraints on document structure and content according to the rules of the ODA Standard. The ODA Raster DAP specifies an interchange format suitable for the transfer of formatted structured documents between systems designed for raster graphics applications. The documents supported by this standard are based on a paradigm of an electronic engineering drawing, illustration, or other electronic image. Within an ODA document, only raster graphics content is allowed and supported by this FIPS.

The ODA Raster DAP was initially developed by an ad-hoc Continuous Acquisition and Life-Cycle Support (CALS) Tiling Task Group. CALS, formerly known as the Computer-aided Acquisition and Logistic Support, is a Department of Defense (DoD) initiative. The ODA Raster DAP was further developed by vendors and users of computer networks/systems participating in the Open Systems Environment Implementors' Workshop (OIW), and finally harmonized with the International organizations participating in the Profile Alignment Group for ODA (PAGODA). Finally, it was submitted to ISO/IEC JTC1/Special Group on Functional Standards (SGFS) for processing as part 1 of the ISP.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory).

6. Cross Index.

a. ISO/IEC 8613:1994—ITU–T 410 Recommendation Series (1993), Information Processing—Text and Office Systems Open Document Architecture (ODA) and Interchange Format Standard.

b. NIST Special Publication 500–224, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 8, Edition 1, December 1994.

C. ANSI/AIIM MS53–1993, Standard Recommended Practice—File Format for Storage and Exchange of Images—Bi-Level Image File Format.

7. Related Documents. Related ISO and ITU documents are listed in the normative reference section of the ODA Raster DAP. Other related documents are:

a. FIPS PUB 149, Telecommunications: Facsimile Coding Schemes and Coding Control Functions for Group 3 Facsimile Apparatus.

b. FIPS PUB 150, Telecommunications: Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus.

c. NISTIR 5108, Raster Graphics: A Tutorial and Implementation Guide.

8. Objectives. The FIPS for ODA Raster DAP permits Federal departments and agencies to exercise more effective control over the production, management, and use of Government's raster graphics applications. The primary objectives of this standard are:

—To promote interchange of structured documents containing raster graphics images between image processing systems of different manufacturers,
—To facilitate the use of advanced technology by the Federal Government,
—To contribute to the economic and efficient use of image and document processing system resources, and
—To avoid the proliferation of vendor-unique solutions.

9. Applicability. The ODA Roster DAP is available for use by Federal Government agencies when acquiring and developing ODA raster graphics applications. This FIPS applies to systems processing, generating, and receiving raster graphics images utilizing the ODA standard in a structured document environment. It specifies the structure and parameters for describing and interchanging bi-level untiled compressed images as well as tiled raster images. Each system acquired or developed by Federal agencies to support the ODA Raster DAP shall include appropriate system-to-DAP and DAP-to-system translators, such that incoming data streams are interpreted correctly and that outgoing data streams are generated correctly. These translators may be acquired separately from the acquisition of the application system when it is in the best interest of the Federal agency to do so. Use of the standard is independent of the communications used to transfer documents produced by these applications; that is, this standard may be used within the existing framework of communication protocols. There are three levels of applicability defined to satisfy different implementation requirements.

10. Specifications. This FIPS adopts the provisions of ISO/IEC 12064–1 by defining three levels of implementation support. All levels must conform to the document and raster layout specifications of [ITU–T Rec. T.410 series—ISO/IEC 8613] and ISO/IEC ISP 12064–1 that are essential for raster graphics applications. The specifications for ODA data streams are also defined in [ITU–T Rec. T.410 series—ISO/IEC 8613] and ISO/IEC ISP 12064–1 and apply to all levels defined in this FIPS. The levels are: ANSI/AIIM MS–53 (Untiled), Intermediated ODA Raster DAP, and Full ODA Raster DAP.

10.1. ANSI/AIIM MS–53 (Untiled). This level of implementation supports ANSI/AIIM MS–53–1993, Standard Recommended Practice—File Format for Storage and Exchange of Images—Bi-Level Image File Format: Part 1. Files written in conformance with any of the pre-defined file formats described in the ANSI/AIIM MS–53 standard can be imported into an ODA implementation. Each of six file formats can be implemented without either technical knowledge or understanding of the ODA format. This implementation does not support tiled raster images but does support both ITU–T Recommendation T.6 (Group 4) and ITU–T Recommendation T.4 (Group 3) compression algorithms.

10.2. Intermediate ODA Raster DAP. This level of implementation supports raster graphics images in either the untiled or tiled format. The following restrictions apply to this level of implementation.

a. The ITU–T Recommendation T.4 (Group 3) one-dimensional and two-dimensional compression algorithms are not supported.

b. If the image is tiled, the tile size must be restricted to 512 X 512 pels.

c. The uncompressed escape option defined in FIPS PUB 150 (ITU–T Recommendation T.6) will not be used.

d. The bit ordering will be restricted to only the most significant bit (MSB) to least significant bit (LSB), the ''down'' bit order.

e. Only the ''Document-reference'' attribute within the Document Profile Document Management attributes is supported.

10.3. Full ODA Raster DAP. This level of implementation supports raster graphics images in either the untiled or tiled format. It fully supports all aspects of the ODA Raster DAP.

10.4. Miscellaneous requirements. A bitmap image or tile represents the ''information'' in a document by one bits and the ''background'' by zero bits. This FIPS requires that the encoding programs exporting document images for interchange must produce the image with a pel line dimension which is a multiple of eight pels.

10.5. Conformance requirements. All implementations, regardless of implementation level, claiming conformance to this FIPS must adhere to the specific requirements defined in the ''Conformance'' clause of the ODA Raster DAP and to the general rules below.

Conformance Rules for Data Streams. A conforming data stream shall be syntactically, semantically, and structurally correct as defined in this standard.

Conformance Rules for Generators. A generator which claims conformance to this standard shall create only conforming data streams which correctly represent the raster graphics image which was input to the generator.

Conformance Rules for Receivers. A receiver which claims conformance to this standard shall be capable of reading and correctly processing any conforming data stream without halting or aborting such that it produces the correct results.

11. Implementation. The implementation of this standard involves three areas of consideration: acquisition of raster graphics implementations, interpretations of the standard, and validation of ODA Raster DAP implementations.

11.1. Acquisition of Raster Graphics Applications. This standard becomes effective September 1, 1995. For a period of twelve (12) months after the effective date, agencies are permitted to acquire alternative software that provides equivalent functionality to the ODA Raster DAP. Agencies are encouraged to use this standard for solicitation proposals for new raster processing systems to be acquired after the effective date. This standard is mandatory for use in all solicitation proposals for new ODA raster application products acquired twelve (12) months after the effective date.

11.2. Interpretation of the Standard. NIST provides for the resolution of

questions regarding FIPS for ODA Raster DAP specifications and requirements, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29–3. All questions about the interpretation of FIPS for ODA Raster DAP should be addressed to: Computer Systems Laboratory, Attn: Raster Graphics Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

11.3. Validation of ODA Raster DAP Implementations. Implementations of FIPS ODA Raster DAP shall be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS ODA Raster DAP. The goal of the NIST ODA Raster DAP Validation Test Service is to maximize the probability of successful interchange between conforming systems.

Validation testing provides a way of determining the degree to which an implementation conforms to a standard. The testing of ODA Raster DAP implementations to determine the degree to which they conform to the standard may be required by Government agencies in accordance with Federal Information Resources Management Regulation (FIRMR) 201–20.303, 201–20.304, 201–39.1002, and the associated Federal ADP and Telecommunications Standard Index.

The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of products.

Information concerning the NIST Raster Graphics Validation Test Service and validation procedures can be obtained by contacting the: National Institute of Standards and Technology, Computer Systems Laboratory, ATTN: Raster Graphics Test Service, Building 225, Room A266, Gaithersburg, MD 20899, (301) 975–3257.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to FIPS. The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement-sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 194 (FIPSPUB194), and title. Specify microfiche, if desired. Payment may be made by check, money order, or NTIS deposit account.

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[Docket No. 950120022–5022–01]

RIN 0693–AB25

Federal Information Processing Standards Publication 119–1, Ada

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 119–1, Ada. This revised standard adopts the American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, which specifies the form and meaning of programs written in Ada.

SUMMARY: On July 11, 1994 (59 FR 35315–35317), notice was published in the **Federal Register** that a revision to Federal Information Processing Standard 119, Ada was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to the revised standard was reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

The FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard becomes effective July 10, 1995.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Dashiell, telephone (301) 975–2490, National Institute of Standards and Technology, Gaithersburg, MD 20899.

EXECUTIVE ORDER 12866: This FIPS notice has been determined to be ''not significant'' for purposes of E.O. 12866.

Dated: March 7, 1995.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 119–1

(date)

Announcing the Standard for Ada

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111 (d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Ada (FIPS PUB 119–1).

2. Category of Standard. Software Standard, Programming Language.

3. Explanation. This publication is a revision of FIPS PUB 119 and supersedes that document in its entirety.

This publication announces the adoption of American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, as a Federal Information Processing Standard (FIPS). American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995, specifies the form and meaning of programs written in Ada. The purpose of the standard is to promote portability of Ada programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory (CSL).

6. Cross Index. American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995.

7. Related Documents.

a. Federal ADP and Telecommunications Standards Index, U.S. General Services Administration, Information Resources Management Service, April 1994 (updated periodically).

b. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

c. FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992.

d. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

e. NIST, Validated Products List, (republished quarterly). Available by subscription from the National Technical Information Service (NTIS).

f. ISO 6429: 1992(E)—Information Technology—Control Functions for Coded Character Sets.

g. ISO 646 Information Processing—7-bit Single-Byte Coded Character Set.

h. ISO 8859–1:1987(E)—Information Processing—8 bit Single-Byte Coded Character Sets—Part 1: Latin Alphabet No. 1.

i. ISO 10646–1:1993 Information Technology—Universal Multiple-Octet Coded Character Set (UCS)—Part 1: Architecture and Balic Multilingual Plane.

8. Objectives. Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Governmentwide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. Applicability.

a. Federal standards for high level programming languages should be used for computer applications that are either developed or acquired for government use. FIPS Ada is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Ada is suitable for use in programming and any applications for which there is no specific language available specifically targeted to that application.

b. The use of FIPS Ada is recommended for the following applications and situations:

—those involving control of real-time or parallel processes.

—very large systems.

—systems with requirements for very high reliability.

—systems which are to be developed with reusable software packages.

—when it is anticipated that the life of an application will be longer than the life of the presently utilized equipment.

—the application or program is under constant review for updating of the specifications, and changes may result frequently.

—the application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—the program will or might be run on equipment other than that for which the program is initially written.

—the program is to be understood and maintained by programmers other than the original ones.

—the advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language.

—the program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

10. Specifications. FIPS Ada specifications are the language specifications contained in American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995 standard.

The American National Standard and the International Organization for Standardization Reference Manual for the Ada Programming Language, ANSI/ISO/IEC 8652:1995 standard document specifies the form of a program written in Ada, the effect of translating and

executing a program, predefined library entities that must be supplied, and detection of compilation and/or link errors.

The standard does not specify limits on the size or complexity of programs, the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. Implementation. The implementation of FIPS Ada involves four areas of consideration: the effective date, acquisition of Ada processors, interpretation of FIPS Ada, and validation of processors.

11.1 Effective Date. This revised standard becomes effective July 10, 1995. Ada Processors acquired for Federal use after this date should conform to FIPS PUB 119–1.

A transition period provides time for industry to produce Ada language processors conforming to the standard. The transition period begins on the effective date and ends March 1, 1997. The provisions of FIPS PUB 119–1 apply to orders placed after the effective date of this publication. If, during the transition period, a processor conforming to FIPS PUB 119–1 is not available, a processor conforming to FIPS PUB 119 may be acquired for interim use during the transition period.

This transition period is intended to give implementations that conform to FIPS PUB 119 time to make the enhancements necessary to enable conformance to FIPS PUB 119–1. No further transitional period is necessary.

11.2 Acquisition of Ada Processors. Conformance to FIPS Ada should be considered whether Ada processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Recommended terminology for procurement of FIPS Ada is contained in the U.S. General Services Administration publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 1.

11.3 Interpretation of FIPS Ada. The National Institute of Standards and Technology provides for the resolution of questions (see FIPS PUB 29–3, Interpretation Procedures for FIPS Software, 29 October 1992) regarding the specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this standard should be addressed to: Director, Computer Systems Laboratory, Attn: FIPS Ada Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@alpha.ncsl.nist.gov.

11.4 Validation of Ada Processors. Implementations of FIPS Ada shall be validated in accordance with the NIST Computer Systems laboratory (CSL) validation procedures for FIPS Ada. Recommended procurement terminology for validation of FIPS Ada is contained in the U.S. General Services Administration (GSA) publication Federal ADP & Telecommunications Standards Index, Chapter 4 Part 2. This GSA publication provides terminology for three validation options; Delayed Validation, Prior Validation Testing, and Prior Validation. The agency shall select the appropriate validation option and shall specify whether a Validation Summary Report or Certificate of Validation is required. The agency shall specify appropriate time frames for validation and correction of nonconformities. The agency is advised to refer to the NIST publication Validated Products List for information about the validation status of Ada products. This information may be used to specify validation time frames that are not unduly restrictive of competition.

The agency shall specify the criteria used to determine whether a Validation Summary Report (VSR) or Certificate is applicable to the hardware/software environment of the Ada implementation offered. The criteria for applicability of a VSR or Certificate should be appropriate to the size and timing of the procurement. A large procurement may require that the offered version/release of the Ada implementation shall be validated in a specified hardware/software environment and that the validation shall be conducted with specified hardware/software features or parameter settings; e.g. the same parameter settings to be used in a performance benchmark. An agency with a single/license procurement may review the Validated Products List to determine the applicability of existing VSRs or Certificates tot he agency's hardware/software environment.

Ada implementations shall be evaluated using a NIST approved test suite.

For further information contact: Director, Computer Systems Laboratory, Attn: FIPS Ada Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Voice: 301–975–2490, FAX: 301–948–6213, e-mail: dashiell@alpha.ncsl.nist.gov.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, Attn: FIPS Waiver Decisions, technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 119–1 (FIPSPUB119–1), and title. Payment

may be made by check, money order, or deposit account.

[FR Doc. 95–6099 Filed 3–10–95; 8:45 am]

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National Oceanic and Atmospheric Administration

[Docket No. 940961–4261]

RIN 0648–ZA11

NOAA Seasonal-to-Interannual Climate Prediction Program Research Centers, Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: NOAA invites interested institutions to submit letters of intent indicating interest in establishing a cooperative agreement with NOAA to participate in a multinational network of Research Centers within the proposed Seasonal to Interannual Climate Prediction Program (SCPP).

The proposal to establish an end-to-end, multinational SCPP is based on the evolution of existing program efforts to observe, understand, predict, and assess the ocean and the atmosphere. The programmatic strength of these efforts has been derived from the support of individual federal agencies working together within the context of the U.S. Global Change Research Program (GCRP). These interrelated efforts provide the foundation which has enabled the research community to provide useful predictions of climate variability on seasonal to interannual time scales and are each a component of a comprehensive Program.

The U.S. proposes to initiate a multinational planning process intended to lead to the establishment of the multinational infrastructure needed to generate and transfer useful climate information and forecasts. This Announcement of Opportunity is intended to result in the establishment of NOAA-designated Research Centers to pursue the development of ENSO forecast techniques in anticipation of the full multinational structure which will evolve for SCPP. NOAA intends to ask one or a group of such Centers selected through this announcement to assume specific responsibilities for establishing a center to prepare and disseminate regularly an experimental forecast to all interested countries. Recognizing the value of El Niño-Southern Oscillation (ENSO) forecasting to countries throughout the world, this center is referred to as the International Research Institute (IRI) in the U.S. proposal to establish a Seasonal-to-Interannual Climate Prediction Program. This action on the part of U.S. will represent the first step in the process of initializing the participation of all interested countries, and therefore NOAA wishes to emphasize that extensive multinational consultation will be an integral part of the process leading to a U.S. site for an International Research Institute for SCPP.

Funding for activities supported under this announcement will be provided through the National Oceanic and Atmospheric Administration (NOAA) Climate and Global Change Program administered by the NOAA Office of Global Programs.

DATES: Letters of intent should be submitted to J. Michael Hall, Director, NOAA Office of Global Programs no later than April 12, 1995. Response letters will be issued from NOAA by April 26, 1995. Those institutions which are encouraged to submit full proposals should do so by June 16, 1995. Designation of U.S. Research Centers for SCPP will be completed by July 14, 1995, with appropriate funding action initiated at that time. Selection of the institution(s) which the U.S. will offer as a host site for the Institute is planned to be completed by September 1, 1995.

ADDRESSES: Letters of Intent and Proposals should be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5063, Attn.: Dr. J. Michael Hall.

An Applications Kit can be obtained from: Grants Management Division, National Oceanic and Atmospheric Administration, 1325 East West Highway, Room 5426, Silver Spring, MD 20910, Attn: Michael Nelson.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Mooney, NOAA/Office of Global Programs, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603; 301–427–2089, Internet: mooney@ogp.noaa.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

A total of $5.0 million is available for first-year awards under this announcement. Of this amount, $4.0 million is envisioned to establish an International Research institute for SCPP and $1.0 million is to support work at designed SCPP Research Centers.

This Program Announcement is for projects to be conducted over a three-year period. NOAA believes that the SCPP will benefit significantly from a strong partnership with outside investigators. The funding instrument will be a cooperative agreement based on need for substantial NOAA involvement in the implementation of the project for which an award is to be made. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Program Authority

Authority: 49 U.S.C. 1463; 33 U.S.C. 883d and 883e; 15 U.S.C. 2907; 15 U.S.C. 2931

(CFDA No. 11.431)—Climate and Atmospheric Research

Program Objectives

The multinational network of research, application and operational centers is designed to catalyze the international scientific community in a coordinated research effort to produce the best possible climate forecasts a season to a year to two in advance and to provide forecasts guidance products which are socially and economically useful to countries of the world vulnerable to the impacts of climate variability. The network's Research Centers will promote research efforts designed to continually develop coupled models of the global atmosphere, ocean, and land surface to serve as a basis for improved climate prediction one season or one year or more in advance. Research Centers will transfer model improvements to the International Research Institute for SCPP and to national operational centers.

The International Research Institute will have the responsibility of producing, assessing, and distributing experimental climate forecast guidance products on an international basis and will seek funding from non-U.S. sources as well as from the U.S. The Institute will generate and disseminate experimental forecast guidance and analyses to Regional Application Centers, located around the world, which will refine the forecast based on analyses of local and regional conditions and distribute products of social and economic benefit to users. The U.S. will assist as appropriate in the establishment of Application Centers through a separate process. All of the NOAA-designated Research Centers will work closely with interested national and international operational centers, such as NOAA's National Meteorological Center, which have responsibilities for routine delivery of climate products.

Program Priorities

All proposals should provide detailed three-year plans for modeling research, education and training which build upon the existing program outlined in the letter of intent. Proposals from institutions also interested in hosting the IRI for SCPP should also include detailed information describing the unique qualifications of the institution(s) which will enable it (them) to combine the research and operational activities required to effectively coordinate the program. The following areas should be addressed in the proposal: Creation and maintenance of a climate data base; proposed mechanisms for the development and implementation of model improvements; strategy for generating experimental forecasts guidance products; evidence of capacity for assessing and distributing forecast guidance and supporting analyses to Application Centers and national operational weather prediction centers; support for the preparation for new forecast guidance products based on Application Center needs; and commitment to providing education and training for scientists and potential users of climate information.

Eligibility

Extramural eligibility is limited to U.S. institutions. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement.

Award Period

Proposal for SCPP Research Centers are expected to be of three-year duration.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address the Program Priorities listed above and meet the following evaluation criteria. Equal weight is assigned to each of the criteria.

(1) Scientific Merit: Intrinsic scientific value of the proposed research program.

(2) Relevance: Importance and relevance to the goal of the SCPP.

(3) Methodology: Focused scientific objective and strategy, including modeling research, education and training considerations; project milestones; and final products.

(4) Readiness: Quality of the larger research and education environment; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages: Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, and inclination towards ability to function within a network of institutions with an international perspective.

(6) Costs: Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments. Matching funding is encouraged, but is not required.

Selection Procedures

Upon completing the evaluation of the letters of intent, institutions will be either discouraged or encouraged to submit full proposals for designation as a SCPP Research Center or as a SCPP Research Center/and proposed U.S. host for the International Research Institute for SCPP. All proposals will be evaluated and ranked using the above evaluation criteria by a NOAA review panel which may include NOAA and non-NOAA experts in the field. Their recommendations and evaluations are considered by the Program Manager in final selections. Those ranked by the panel and rated by the Program Manager as not recommended for funding are not given further consideration and are notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the Program Manager will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Letters of Intent: (1) Letters of Intent are required prior to submission of a full proposal. (2) Letters of Intent should be no more than ten pages in length and include the name(s) and institution(s) of principal investigator(s); detailed description of the resources and unique capabilities that the institution would bring to the network, specifically scientific expertise, specialized facilities, ongoing research activities, educational and training programs, and university faculty positions. Explicitly identify existing resource levels for TOGA and other relevant research projects supported by NOAA and other agencies. Letters of intent from institutions interested in designation as a SCPP Research Center which would then, individually or in concert, provide host facilities for the Institute should indicate in addition specific interest in and capability for serving as the host site for a center which will take on the responsibility for systematic production, assessment and distribution of experimental climate forecast guidance products (the International Research Institute). (3) An original, signed letter of intent is required by the deadline date. Facsimile and electronic mail submission of letters of intent will not be accepted. (4) Evaluation will be by program management, according to the selection criteria for full proposals described above. (5) Projects deemed unsuitable during program review should not be submitted as full proposals.

(a) Full Proposals: (1) Applicants are not required to submit more than an original and two copies of applications. (2) Proposals must be limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for three-year duration. Required government standard forms are not included in the page limit. (3) An original, signed proposal is required by the deadline date. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements: All proposals should include the following elements:

(1) Signed title page: The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigators(s), total proposed cost and budget period.

(3) Statement of work: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the SCPP, and the program priorities listed above. Benefits of proposed project to the general public and the scientific community should be discussed. Results from related projects supported by NOAA and other agencies should be included. The statement of work, excluding figures and other visual materials, must not exceed 15 pages of text. Appended information may not be used to circumvent the page length limit. Investigators wishing to submit group proposals that may exceed the 15 page limit should discuss this possibility with the Program Manager prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 10 pages of overall project description plus up to 5 pages per person of individual project descriptions.

(4) Budget: Applicants must submit a detailed budget using the Standard Form 424a(4–92), Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Unless otherwise directed by the Program Manager, proposals should indicate a target start date of September 1, 1995.

(5) Vitae: Abbreviated Curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(6) Current and pending support: For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(c) Other requirements:

Primary applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Applicants are also hereby notified of the following:

(1) Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

(2) Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(5) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(6) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(7) Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(8) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(9) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(11) Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged to the extent feasible, to purchase American-made equipment or products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Section 607 (a) and (b).

(12) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephone Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 pm.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms have been approved by

the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Dated: January 9, 1995.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 95–6108 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits and Amendment of a Restraint Period and Visa Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

March 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and amending a restraint period and visa requirements.

EFFECTIVE DATE: March 14, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, the current Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended and extended, is being converted to a twelve-month calendar year agreement.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period to extend through December 31, 1994. The current limits are being amended and new limits are being established for Categories 434 and 440. Also, limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995. The 1995 limits for Categories 331/631, 334/634, 335/835, 336/636/836, 340/640, 341/641, 347/348/847, 351/651, 352/652, 635 and 840 have been reduced for carryforward and special carryforward applied to the 1994 agreement period. The 1994 limits for Categories 314 and 347/348/847 will be filled upon opening. Goods shipped in excess of these limits are being charged to the corresponding limits for the 1995 period. The visa arrangement is being amended to no longer require a 340–Y/640–Y visa for goods produced or manufactured in Sri Lanka and exported from Sri Lanka.

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 59 FR 65531, published on December 20, 1994). Also see 53 FR 34573, published on September 7, 1988; and 59 FR 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, 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

March 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on March 14, 1995, you are directed, pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, to amend the current restraint period to begin on January 1, 1994 and extend through December 31, 1994 at the levels listed below. The sublimit for Categories 340–Y/640–Y [1] is being eliminated.

Category	1994 twelve-month limit [a]
237	267,674 dozen.
314	3,600,000 square meters.
331/631	3,330,773 dozen pairs.
333/633	29,041 dozen.
334/634	867,071 dozen.
335/835	334,700 dozen.
336/636/836	658,706 dozen.
338/339	1,244,751 dozen.
340/640	1,343,974 dozen.
341/641	1,868,738 dozen of which not more than 1,245,825 dozen shall be in Category 341 and not more than 1,174,163 dozen shall be in Category 641.
342/642/842	508,054 dozen.
345/845	113,332 dozen.
347/348/847	1,573,138 dozen.
350/650	59,280 dozen.
351/651	338,285 dozen.
352/652	1,329,966 dozen.
359–C/659–C [b]	960,102 kilograms.
360	1,200,000 numbers.
363	7,881,596 numbers.
369–D [c]	726,248 kilograms.
369–S [d]	689,784 kilograms.
434	7,000 dozen.
435	15,750 dozen.
440	10,000 dozen.
611	4,700,000 square meters.
635	461,873 dozen.
638/639/838	758,023 dozen.
644	258,635 numbers.
645/646	45,526 dozen.
647/648	777,128 dozen.
840	250,000 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 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, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[d] Category 369–S: only HTS number 6307.10.2005.

Textile products in Categories 434 and 440 which have been released from the custody of the U.S. Customs Service under the

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC); and the Memorandum of Understanding dated February 6, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka exported during the period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following restraint limits:

Category	1995 twelve-month limit [a]
237	257,932 dozen.
314	3,850,560 square meters.
331/631	1,833,374 dozen pairs.
333/633	48,553 dozen.
334/634	324,274 dozen.
335/835	166,086 dozen.
336/636/836	199,574 dozen.
338/339	1,137,937 dozen.
340/640	851,963 dozen.
341/641	1,650,443 dozen of which not more than 1,100,295 dozen shall be in Category 341 and not more than 1,133,370 dozen shall be in Category 641.
342/642/842	591,726 dozen.
345/845	153,244 dozen.
347/348/847	1,087,585 dozen.
350/650	106,207 dozen.
351/651	277,668 dozen.
352/652	1,032,228 dozen.
359–C/659–C [b]	1,168,664 kilograms.
360	1,283,520 numbers.
363	11,000,049 numbers.
369–D [c]	825,855 kilograms.
369–S [d]	688,211 kilograms.
434	7,081 dozen.
435	15,174 dozen.
440	10,116 dozen.
611	5,027,120 square meters.
635	221,448 dozen.
638/639/838	810,870 dozen.
644	455,175 numbers.
645/646	182,069 dozen.
647/648	976,192 dozen.
840	233,480 dozen.

[a] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 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, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[c] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[d] Category 369–S: only HTS number 6307.10.2005.

Imports charged to the category limits for the period January 1, 1994 through December 31, 1994 shall be charged to 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 1995 levels set forth in this directive.

You are directed to amend further the directed dated September 1, 1988 to no longer require a part-category visa for 340–Y/640–Y for goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after March 14, 1995. Goods exported during the period March 14, 1995 through April 13, 1995 shall not be denied entry if visaed as 340–Y/640–Y.

The limits set forth above are subject to adjustments in the future pursuant to the provisions of the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

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 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. 95–6124 Filed 3–10–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Request for Public Participation in Formulating Children's Health Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) is considering establishing a summer service program targeted at children's health. The Corporation seeks input from community-based organizations and other agencies or persons knowledgeable in the area of children's health. The Corporation seeks information and input regarding the most effective means to address the health needs of children through national service.

DATES: The Corporation seeks the participation of the public in this process until March 20, 1995.

ADDRESSES: Responses to this notice should be sent to Cecilia Calvo at the Corporation for National Service. Address: 1201 New York Avenue NW, Room 8403–D, Washington, D.C. 20525. Fax: (202) 565–781.

FOR FURTHER INFORMATION CONTACT: The Corporation for National Service, at (202) 606–5000, ex. 341. For individuals with disabilities, the information contained in this notice will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Corporation is a government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.*, the Corporation may make grants to States, subdivisions of States, Indian tribes, U.S. territories, public or private nonprofit organizations, Federal agencies and institutions of higher education to carry out national service programs.

Early childhood development is among the Corporation's priorities for fiscal year 1995. The Corporation is considering the establishment of a limited summer program targeted at children's health. This program, if established, will be implemented by programs that are already funded by the Corporation and by organizations in partnership with programs already funded by the Corporation.

The Corporation seeks specific information on the following issues: (1) Which children's health needs can most appropriately and expeditiously be addressed through the Corporation's national service programs; (2) whether existing organizations have sufficient capacity and expertise to implement an effective children's health program; (3) ways in which existing organizations or

persons have successfully implemented programs addressing children's health needs; of particular interest to the Corporation are strategies on planning, development, implementation, and evaluation of children's health programs that can be created and completed in a short period of time.

Dated: March 8, 1995.

Terry Russell,

General Counsel.

[FR Doc. 95–6123 Filed 3–10–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICE ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0015]

Clearance Request for Contractor Inventory Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0015).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Inventory Schedules.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4655.

SUPPLEMENTARY INFORMATION:

A. Purpose

The series of standard forms covering contractors' inventories are essential for reporting, redistribution, and disposal of excess Government property at contractor plants (upon contract completion) and contractor termination inventory in support of contractor termination settlement proposals.

The contractor who is accountable for the property or who is submitting a termination settlement proposal is responsible for completing the inventory schedules.

These inventory schedules are the only means by which contractors report excess contractor inventory and by which the Government is able to achieve screening, redistribution and disposal of such property. They are also the only means of contractors supporting the inventory portion of their termination settlement proposals and accounting for Government property in their possession. Thus, this information is not available to those requiring it from any other source.

A variety of activities utilize these inventory schedules. Thus, the Termination Contracting Officer and the cognizant audit agency use the schedules in evaluating the termination charges being claimed under terminated Government contracts. The Property Administrator of the contract administration office uses the schedules to ensure that the contractor has accounted for all Government property in its possession.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *12,500*; responses per respondent, *4*; total annual responses, *50,000*; preparation hours per response, *1*; and total response burden hours, *50,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0015, Contractor Inventory Schedules, in all correspondence.

Dated: March 7, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–6114 Filed 3–10–95; 8:45 am]

BILLING CODE 6820–34–M

Department of the Army

MTMC's Consideration to Employ Full-Service Contracts to Improve the Department of Defense Personal Property Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Request for comments.

SUMMARY: The evolving Defense environment encompasses a smaller uniformed force, less overseas basing, reducing funding, and diminished staffing of support activities. These changes will directly affect quality of life issues for the military service members and their families. In light of these significant changes in the defense environment, the Military Traffic Management Command (MTMC) is engaged in an effort to simplify current processes, control program costs, and ensure quality of service by performing a reengineering of the existing DOD Personal Property Program. This reengineering effort will adopt, to the fullest extent possible, commercial business processes characteristic of world-class customers and suppliers and relieve carriers of DOD unique terms and conditions. It will also focus on the customer, reward results, foster competition, and seek excellence of vendor performance.

DATES: Comments must be received by May 12, 1995.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ann Gibson, MTOP–QS, (703) 756–1590.

SUPPLEMENTARY INFORMATION: An alternative business process being considered is competitively acquiring personal property services through use of long-term, full-service contracts under the Federal Acquisition Regulation (FAR). Under this alternative, MTMC would competitively select full service contractor(s) for defined regions. The contractor(s) selected for each region would be responsible for all management, administrative, and operational functions currently performed by PPSO (Personal Property Shipping Offices), PPPOs (Personal Property Processing Offices), and carriers. PPSO and PPPO functions includes, but are not limited to, service member counseling, shipping document preparation, management report generation, arranging movement of all types of domestic and international outbound shipments,

managing the storage and delivery of all types of domestic and international inbound shipments, managing long term storage, and evaluation of performance and customer satisfaction. Carrier functions include, but are not limited to, pre-move surveys, shipment packaging, onward shipment movement, storage-in-transit, long term storage, shipment delivery, shipment unpacking, and claims settlement.

Under this proposed contracting approach, subcontracting goals will be included to ensure capability (particularly during the peak season) and continued visibility of small, small disadvantaged, and women-owned carriers.

In formulating comments, the following issues should be considered: The ability to expand operations during emergencies or during peak shipping season; subcontracting, specifically to small, small and disadvantaged, and women-owned businesses; the ability to manage the movement of all types of personal property shipments, to include, but not limited to, unaccompanied baggage, household goods, mobile homes, and boats; the ability manage administrative processes, to include, but not limited to, methods for billing and payment of transportation and transportation related charges, direct settlement with property owners for loss and/or damage claims; establishment of rate structures; establishment of performance evaluation criterion; and management of long and short term storage.

If this alternative business practice is pursued, the carrier industry will also be afforded the opportunity to comment on a draft solicitation, as well as to attend pre-solicitation and pre-proposal conferences.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–6046 Filed 3–10–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Alameda, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Alameda, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or William R. Carsillo, Real Estate Center, Engineering Field Activity West (Code 2411), Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3815. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Ben Quiroz, Facilities Management (Code 51), Bldg. 114, Room 204, Naval Air Station Alameda, 250 Mall Square Alameda, CA 94501–5000, telephone (510) 263–3712.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Air Station, Alameda, CA, and its tenant activity, the Naval Aviation Depot, Alameda, were designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on May 20, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 23, 1994, the Alameda Reuse and Redevelopment Authority submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Air Station, Alameda, CA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Alameda, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Alameda Reuse and Redevelopment Authority (ARRA), which was formed through a joint powers agreement between the City of Alameda and Alameda County. ARRA is supported by the Alameda Base Reuse Advisory Group (BRAG), established to provide advice to ARRA for redevelopment of the closing air station. A cross section of community interests is represented on BRAG. Day-to-day operations of ARRA and BRAG are handled by a professional staff. For further information contact Ms. Julie Montrom, Alameda Reuse and Redevelopment Authority, Postal Directory Bldg. 90, Naval Air Station, Alameda, CA 94501–5012, telephone (510) 263–2870 and facsimile (510) 521–3764.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Air Station, Alameda, CA, that were declared surplus to the federal government on May 20, 1994.

Land

Approximately 1,046 acres of improved and unimproved fee simple land at the U.S. Naval Air Station, Alameda, City of Alameda, Alameda County, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1997 unless otherwise indicated. Property numbers are available on request.

—Administration/Office facilities (10 structures). Comments: Approx. 524,593 square feet.
—Aircraft maintenance/Industrial facilities (97 structures). Comments: Approx. 2,878,982 square feet.
—Bachelor quarters housing (6 structures). Comments: Approx. 505,774 square feet. Most have individual rooms.
—Bakery (1 structure). Comments: Approx. 5,100 square feet.
—Community facilities (13 structures). Comments: Approx. 50,249 square feet.
—Family housing (single and multi-family structures with 931 individual housing units). Comments: Approx. 1,449,596 square feet. Built between 1941 and 1969.
—Fuel storage facilities (38 structures). Comments: Approx. 454,985 gallon capacity and 6 miles of pipeline.
—Laboratory (1 structure). Comments: 10,248 square feet.
—Maintenance facilities (29 structures). Comments: Approx. 380,570 square feet. Automotive, ships, ammunition, electronics, and public works maintenance facilities.
—Medical clinic (1 structure). Comments: Approx. 32,983 square feet.
—Operations buildings (7 structures). Comments: Approx. 41,544 square feet.
—Piers and wharves (6 structures). Comments: Approx. 46,043 square yards.
—Police Station (1 structure). Comments: Approx. 5,196 square feet.
—Recreational facilities, indoor (20 structures). Comments: Approx. 264,568 square feet. Bowling alley, boathouse, clubs, library, gym, and hobby shops.
—Recreational facilities, outdoor (15 structures). Comments: Playing fields, playing courts, pool, marina, and skeet range.
—Stores and service facilities (11 structures). Comments: Approx. 260,777 square feet.
—Training buildings (5 structures). Comments: Approx. 96,459 square feet.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, railroads, sewage, and water.
—Warehouse/storage facilities (49 structures). Comments: Approx. 787,845 square feet. Includes ammunition, cold storage, general, and hazardous material storage facilities.
—Open storage areas. Comments: Approx. 337,427 square yards.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Alameda, shall submit to the redevelopment authority (ARRA) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Alameda, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the ARRA elected to proceed under the new statute, i.e., December 23, 1994.

Dated: March 7, 1995

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6091 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Oak Knoll Naval Hospital, Oakland, CA

AGENCY: Department of the Navy, DOD.

ACTION: NOTICE.

SUMMARY: This Notice provides information regarding the City of Oakland's resolution to create an ''Oakland Base Reuse Authority'' whose principal focus will be to determine the appropriate reuse of Oak Knoll Naval Hospital, Oakland, CA, the surplus property that is located at that base closure site, and the notification by the City of Oakland and its Task Force to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Mr. Jesse W. J. Myres, Real Estate Center, Engineering Field Activity West (Code 2411JWJM), Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3819 and facsimile (415) 244–3803. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Commander Juanita A. Buda, Head, Planning Department, 8750 Mountain Blvd., Oakland, CA 94627–5000, telephone (510) 633–4549 and facsimile (510) 633–6512.

SUPPLEMENTARY INFORMATION: In 1993, Oak Knoll Naval Hospital, Oakland, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–10, as amended. Pursuant to this designation, the majority of the land and facilities at this base closure site were on July 11, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–21) was signed into law. Section 2 of this statute provides the local reuse authority at base closure sites the option of proceeding under new procedures with regard to the manner in which redevelopment plans for the closing base are formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 22, 1994, the City of Oakland and its Task Force submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding surplus property at the Oak Knoll Naval Hospital, Oakland, CA, is published in the **Federal Register**.

Redevelopment Authority

The City of Oakland has passed a resolution (Resolution No. 71598 and Redevelopment Agency of the City of Oakland No. 95–1) to create an ''Oakland Base Reuse Authority'' whose principle focus will be to determine the appropriate reuse of Oak Knoll Naval Hospital, Oakland, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended. For information regarding the creation of the ''Oakland Base Reuse Authority'' and to submit all written expressions of interest for surplus property contact Mr. Jim Rinehart, Office of Economic Development and Employment, 3333 Broadway, 9th Floor, Oakland, CA, 94612, telephone (510) 238–3015 and facsimile (510) 238–3691.

Surplus Property Descriptions

The following is a listing of the land and facilities at Oak Knoll Naval Hospital, Oakland, CA, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 183 acres of improved and unimproved fee simple land at Oak Knoll Naval Hospital, Oakland, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available once the base closes. Currently, the base is scheduled to close on October 1, 1996, unless otherwise indicated. Property numbers are available on request.

—Administration/Office facilities (8 structures). Comments: Approx. 122,272 square feet.
—Bachelor quarters housing (2 structures). Comments: Approx. 69,658 square feet.
—Community facilities (4 structures). Comments: Approx. 58,930 square feet.
—Family housing (39 structures with 81 individual housing units). Comments: Approx. 125,331 square feet. Built between 1943 and 1974.
—Medical Hospital facilities (2 structures). Comments: Approx. 460,724 square feet.
—Helicopter landing pads (2 pads). Comments: Approx. 25,000 square feet.
—Laboratories (2 structure). Comments: Approx. 15,690 square feet.
—Maintenance facilities (7 structures). Comments: Approx. 12,948 square feet. Automotive, grounds, and public works maintenance facilities.
—Operations buildings (3 structures). Comments: Approx. 8,410 square feet.
—Fire safety/station facility (1 structure). Comments: Approx. 2,020 square feet.
—Recreational facilities, indoor (5 structures). Comments: Approx. 41,737 square feet; gym and hobby shops.
—Recreational facilities, outdoor. Comments: Playing fields, playing courts, pool, barbecue areas, and picnic areas.
—Stores and service facilities (1 structure). Comments: Approx. 22,112 square feet.
—Training buildings (2 structures). Comments: Approx. 31,894 square feet.
—Utilities (10 structures). Comments: Measuring systems vary. Telephone, electrical, gas, sewage, and water utility systems.
—Warehouse/storage facilities (15 structures). Comments: Approx. 61,735 square feet.
—Miscellaneous Structures. Comments: Roads, fences, walkways, etc.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of Oak Knoll Naval Hospital, Oakland, CA, shall submit to the City of Oakland (Oakland Base Reuse Authority), a written notice of interest of such governments, representatives, and parties in the above described surplus property, or any portion thereof. Such written notices of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the City of Oakland (Oakland Base Reuse Authority) shall assist all interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the County of Alameda and City of Oakland, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the City of Oakland and its Task Force elected to proceed under the new statute, i.e., December 22, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6092 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Department of Defense, Housing Facility, Novato, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Department of Defense, Housing Facility, Novato, CA, the surplus property that is located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Beverly Freitas, Supervisory Realty Specialist, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (415) 244–3804. For detailed information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Leonard Bastian, Officer in Charge, Department of Defense, Housing Facility, Bldg. 1000, Novato, CA 94949, telephone (415) 382–4112.

SUPPLEMENTARY INFORMATION: In 1993, the Department of Defense, Housing Facility, Novato, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended.

Pursuant to this designation, the majority of the land and facilities at this installation were on December 19, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 9, 1994, the City of Novato submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Department of Defense, Housing Facility, Novato, CA, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Department of Defense, Housing Facility, Novato, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Hamilton Reuse Planning Authority, Multi-Agency Board. The Board has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing facility. A cross section of community interests is represented on the committee. Day-to-day operations of the committee are handled by a Project Manager. The address of the Hamilton Reuse Planning Authority, Multi-Agency Board is 900 Sherman Avenue, Novato, CA 94945, telephone (415) 897–4311 and facsimile (415) 897–4354.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Department of Defense, Housing Facility, Novato, CA, that were declared surplus to the federal government on December 19, 1994.

Land

Approximately 555.03 acres of improved and unimproved fee simple land at the Department of Defense, Housing Facility, Novato, CA.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1996, unless otherwise indicated. Property numbers are available on request.

—Warehouse space. Comments: Approx. 1,161 square feet in Building 191; 10,200 square feet in Building 801; 2,700 square feet in Building 820; 6,300 square feet in Building 821; 4,000 square feet in Building 826; 800 square feet in Building 827; 9,600 square feet in Building 829.
—Recreation Centers. Comments: Approx. 4,712 square feet in Building 206; 1,846 square feet in Building 915; 1,500 square feet in Building 916; 1,750 square feet in Building 933; 4,850 square feet in Building 934; 2,580 square feet in Building 935; 2,257 square feet in Building 973.
—Shop/Storage Space. Comments: Approx. 164 square feet in Building 514; 4,469 square feet in Building 914; 3,697 square feet in Building 960; 630 square feet in Building 965; 3,108 square feet in Building 969; 18,088 square feet in Building 972.
—Office/Administrative Space. Comments: Approx. 3,612 square feet in Building 111; 22,294 square feet in Building 203; 13,510 square feet in Building 504; 3,807 square feet in Building 802; 4,921 square feet in Building 1000; 940 square feet in Building 4041.
—Bachelor Officer Quarters. Comments: Approx. 21,328 square feet in Building 201.
—Credit Union. Comments: Approx. 5,880 square feet in Building 930.
—Nursery/Child Care Facility. Comments: Approx. 15,416 square feet in Building 227 and 1,771 square feet in Building 531.
—Chief Petty Officer's Club. Comments: Approx. 17,890 square feet in Building 508.
—Chapel. Comments: Approx. 10,689 square feet in Building 603.
—Auto/Hobby Shop. Comments: Approx. 10,850 square feet in Building 816.
—Theater. Comments: Approx. 6,027 square feet in Building 507.
—Bath House. Comments: Approx. 1,064 square feet in Building 204.
—Navy Commissary. Comments: Approx. 9,333 square feet in Building 803 and 30,203 square feet in Building 804.
—Navy Exchange. Comments: Approx. 39,626 square feet in Building 971.
—Gas Station. Comments: Approx. 4,454 square feet in Building 970.
—Library. Comments: Approx. 680 square feet in Building 540.
—Bowling Alley/Gymnasium. Comments: Approx. 19,694 square feet in Building 115.
—Outdoor Swimming Pools. Comments: Located in Buildings 205, 208, and 209.
—One racquetball court in Building 113, eight tennis courts, and four ball fields.
—Water Tower. Comments: Located in Building 539.
—Radio Station (MARS) & Antenna. Comments: Approx. 2,592 square feet in Building 549 with 161 foot antenna.
—Latrine. Comments: Approx. 114 square feet in Building 550.
—Electrical Power Shed. Comments: Approx. 120 square feet in Building 193.
—Capehart Housing. Comments: 379 family housing units; single unit dwellings, duplexes, and townhouses.
—Spanish Housing. Comments: 132 family housing units; single unit dwellings and duplexes.
—Knolls Housing. Comments: 125 family housing units; apartments.
—Hillside Housing. Comments: 121 family housing units; apartments.
—Rafael Village Housing (offsite). Comments: 503 family housing units; single unit dwellings and duplexes.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, railroads, sewage, water, etc.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Department of Defense, Housing Facility, Novato, CA, shall submit to said redevelopment authority (Hamilton Reuse Planning Authority) a notice of interest, of such governments, representatives, and

parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Novato, CA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Hamilton Reuse Planning Authority elected to proceed under the new statute, i.e., December 9, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate **Federal Register** Liaison Officer.

[FR Doc. 95–6093 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Office of the Deputy Assistant Secretary of the Navy (Conversion and Redevelopment); Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Treasure Island, San Francisco, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Station, Treasure Island, San Francisco, CA, the surplus property located at that base closure site, and the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or K. Spake, Realty Specialist, Real Estate Division, Engineering Field Activity West, Naval Facilities Engineering Command, San Bruno, CA 94066–006, telephone (415) 244–3808.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Station, Treasure Island, San Francisco, CA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, the majority of the land and facilities at this installation were on July 11, 1994, declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On December 14, 1994, the City of San Francisco submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of Section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Station, Treasure Island, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Station, Treasure Island, San Francisco, CA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of San Francisco. The City of San Francisco has established a committee to provide advice to the redevelopment authority on the redevelopment plan for the closing station. A cross section of community interests are represented on the committee. Day-to-day operations of the committee are handled by a Project Manager. The address of the San Francisco Redevelopment Agency is 770 Golden Gate Avenue, San Francisco, CA 94102, telephone (415) 749–2400 and facsimile (415) 749–2528.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Station Treasure Island, that were declared surplus to the federal government on July 11, 1994.

Land

Approximately 717 acres (403 acres uplands and 314 acres submerged lands) of improved and unimproved fee simple land at the Naval Station Treasure Island.

Buildings

The following is a summary of the facilities located on the above described land which will also be available when the station closes on September 30, 1997, unless otherwise indicated. Property numbers are available on request.

—Petroleum Oil Lubricants Pipeline. Comments: Approx. 2,185 square feet.

—Utilities. Comments: Measuring systems vary. Communication lines, electrical transmissions, electrical power, sewage treatment and dispensary, sewage collection, water supply treatment and storage, fire protection, water distribution system, fire and other alarm system, miscellaneous utilities.

—Port Control Office. Comments: Approx. 6,177 square feet in Building 3.

—Photo Building. Comments: Approx. 3,105 square feet in Building 1.

—Armory. Comments: Approx. 1,107 square feet in Building 454.

—Operational Storage. Comments: Approx. 5,459 square feet in Building 111; 512 square feet in Building 112; 2,000 square feet in Building 113; 2,880 square feet in Building 130; 2,880 square feet in Building 131; 79 square feet in Building 143; 765 square feet in Building 290; 980 square feet in Building 355; 100 square feet in Building 361; 3,280 square feet in Building 362.

—Training Facilities. Comments: Approx. 138,661 square feet in Building 2; 14,000 square feet in Building 29; 13,696 square feet in Building 40; 10,957 square feet in Building 92; 9,700 square feet in Building 96; 1,280 square feet in Building 114; 810 square feet in Building 141; 30,834 square feet in Building 180; 3,110 square feet in

Building 335; 1,188 square feet in Building 346; 216 square feet in Building 358; 1,755 square feet in Building 384; 4,000 square feet in Building 445; 672 square feet in Building 448.
—Chemical Lab. Comments: Approx. 18,790 square feet in Building 233.
—Environmental Lab. Comments: Approx. 2,880 square feet in Building 129.
—Electronic, communications, and electrical systems Facility. Comments: Approx. 8,027 square feet in Building 498.
—Ready Magazine. Comments: Approx. 256 square feet in Building 458.
—General Warehouse/Bulk. Comments: Approx. 16,383 square feet in Building 96; 21,778 square feet in Building 99; 148,483 square feet in Building 260 (multi-use bldg). —Servmarts. Comments: Approx. 8,300 square feet in Building 260 (multi-use bldg).
—Administrative/Office. Comments: Approx. 81,000 square feet in Building 1; 85,000 square feet in Building 7; 620 square feet in Building 64; 8,000 square feet in Building 99; 210 square feet in Building 157; 2,000 square feet in Building 229; 41,230 square feet in Building 258; 2097 square feet in Building 260; 60,000+ square feet in Building 450.
—Telephone Exchange Building. Comments: Approx. 3,972 square feet in Building 1.
—Shore Intermediate Maintenance Activity. Comments: Approx. 55,590 square feet in Building 3.
—Administrative Storage. Comments: Approx. 2,132 square feet in Building 69; 1,440 square feet in Building 128; 13,808 square feet in Building 1.
—Flagpole/Billboard/Marker (Five total). Comments: One at Building 405, one at Building 472, two at Building 474, and one at Building 475.
—Community Center. Comments: Approx. 7,788 square feet in Building 271.
—Bachelor Enlisted Quarters (E5–6). Comments: Approx. 104,318 square feet in Building 452 and 57,896 square feet in Building 453.
—Bachelor Enlisted Quarters (E7–9). Comments: Approx. 75,867 square feet in Building 452 and 75,867 square feet in Building 453.
—Fire Station. Comments: Approx. 2,739 square feet in Building 92 and 9,995 square feet in Building 157.
—Brigade. Comments: Approx. 28,971 square feet in Building 195; 33,923 square feet in Building 222; 25,110 square feet in Building 670; 1,200 square feet in Building 671.
—Police Station. Comments: Approx. 11,448 square feet Building 107.
—Gate Sentry House. Comments: Approx. 675 square feet in Building 146.
—Misc. Weather Shelters. Comments: Approx. 240 square feet in Building 93, 240 square feet in Building 124, and 176 square feet in Building 184.
—Public Toilets. Comments: Approx. 16,383 square feet in Building 69 and 308 square feet in Building 480.
—Miscellaneous. Comments: Approx. 132 square feet in Building 70 and 196 square feet in Building 421.
—Employee parking area. Comments: Approx. 30,393 square feet at Building 1.
—Chapel. Comments: Approx. 9,884 square feet in Building 187.
—Post Office. Comments: Approx. 6,622 square feet in Building 258.
—Exchange Retail Store. Comments: Approx. 53,349 square feet in Building 201.
—Exchange Cafe. Comments: Approx. 10,967 square feet in Building 202.
—Exchange service outlets. Comments: Approx. 10,748 square feet total in Buildings 91, 201, 202.
—Red Cross/Navy Relief. Comments: Approx. 1,904 square feet in Building 257.
—Family Service Center. Comments: Approx. 9,974 square feet in Building 257.
—Amusement Center. Comments: Approx. 2,000 square feet in Building 261.
—Service Station. Comments: Approx. 4,030 square feet in Building 330.
—Hobby Shop. Comments: Approx. 9,000 square feet in Building 215.
—Special Service Center. Comments: Approx. 850 square feet in Building 7, 6650 square feet in Building 41, and 4,496 square feet in Building 265.
—Auto Hobby Shop. Comments: Approx. 11,250 square feet in Building 225 and 3,502 square feet in Building 180.
—Bowling Alley. Comments: Approx. 10,714 square feet in Building 261.
—Gymnasium. Comments: Approx. 26,485 square feet in Building 402.
—Indoor Swimming Pool. Comments: Approx. 26,000 square feet in Building 261.
—Youth Center. Comments: Approx. 8,500 square feet in Building 29; 8,543 square feet in Building 215; 18,000 square feet in Building 229; 2,100 square feet in Building 257.
—Theater. Comments: Approx. 10,824 square feet in Building 401.
—Commissary. Comments: Approx. 19,038 square feet in Building 34.
—Officer's Club. Comments: Approx. 24,169 square feet in Building 140.
—Chief Petty Officer's Club. Comments: Approx. 13,200 square feet in Building 227.
—Retail Store. Comments: Approx. 5,760 square feet in Building 497.
—Child Care Center. Comments: Approx. 5,136 square feet in Building 257.
—Library. Comments: Approx. 3,896 in Building 265.
—Miscellaneous Commissary Storage. Comments: Approx. 58,140 square feet in Building 216; 5,929 square feet in Building 257; 9,487 square feet in Building 261; 174 square feet in Building 381; 240 square feet in Building 483.
—Recreation Pavilion. Comments: Approx. 640 square feet in Building 183.
—Indoor Playing Courts. Comments: Approx. 4,080 square feet in Building 402.
—Retail Warehouse. Comments: Approx. 29,050 square feet in Building 201 and 10,598 square feet in Building 202.
—Boat House. Comments: Approx. 1,188 square feet in Building 298 and 780 square feet in Building 496.
—Education Center. Comments: Approx. 9,084 square feet in Building 29.
—Playing Courts. Comments: Located in Buildings 397, 398, and 478.
—Playing Field. Comments: Located in Building 407.
—Skeet range. Comments: Located at Building 459.
—Recreation Grounds. Comments: Located at Building 492.
—Recreation Pier. Comments: Located at P23.
—Museum/Memorial. Comments: Approx. 12,500 square feet in Building 1.
—Incinerator. Comments: Approx. 361 square feet in Building 481.
—Storm Water Pump. Comments: Approx. 265 square feet in Building 493.
—Medical Clinic. Comments: Approx. 28,085 square feet in Building 257.
—Communications Center. Comments: Approx. 12,886 square feet in Building 449 and 2,520 square feet in Building 1.
—Stand-by Generator Building. Comments: Approx. 1,225 square feet in Building 469.
—Applied Instruction Building. Comments: Approx. 310,233 square feet in Building 217; 11,727 square feet in Building 36; 12,706 square feet in Building 293; 8,020 square feet in Building 342; 8,020 square feet in Building 343; 1,920 square feet in

Building 352; 1,920 square feet in Building 353; 41,353 square feet in Building 461; 2,305 square feet in Building 462; 531 square feet in Building 463; 17,030 square feet in Building 600.

—Training Material Storage. Comments: Approx. 9,198 square feet total in Buildings 215, 379, and 461.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station Treasure Island, shall submit to said redevelopment authority (City of San Francisco) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7 (C) and (D) of Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in San Francisco the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the San Francisco Redevelopment Agency of the City of San Francisco elected to proceed under the new statute, i.e., December 14, 1994.

Dated: March 1, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6094 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–FF–P

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00. Request for copies of the patents must include the patent number.

Copies of the patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside the North American Continent). Requests for copies of the patent applications must include the patent application serial number. Claims are deleted from the copies of the patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent No. 5,259,055: Fiber Optic Microcable Produced with Radiation Cured Composite; filed May 23, 1988; patented November 2, 1993.

Patent Application Serial No. 07/199,820: Process for Manufacturing a Fiber Reinforced Optic Microcable with a UV Cured Resin; filed May 26, 1988.

Patent Application Serial No. 08/255,129: Fiber Optic Microcable Produced with Fiber Reinforced Ultraviolet Light Cured Resin and Method for Manufacturing same; filed June 7, 1994.

Patent Application Serial No. 08/316,710: Fiber Optic Microcable Produced with Radiation Cured Composite: filed November 22, 1993.

Dated: March 7, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6089 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–AE–M

Exclusive Patent License; American Pipe Lining, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; American Pipe Lining, Incorporated.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American Pipe Lining, Incorporated, a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/355,581, entitled ''Epoxy Pipelining Composition and Method of Manufacture,'' filed December 14, 1994 in the field of internal coating of pipelines.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ORN 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: March 7, 1995.

M.D. Schetzsle,

Lt. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6090 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

It was published in the November 14, 1994 **Federal Register** with the title ''Color Changing Pigments for Solar Energy Controllable Patents and Coatings.'' This title is in error. The correct title is printed below.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/097,802: Reversible Thermochromic Pigments; filed July 27, 1993.

Dated: March 3, 1995.

M.D. Schetzsle,

Lt. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6095 Filed 3–10–95; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 15, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room, 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency or collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: Expedited.
Title: Application for New Grants Under Bilingual Education and Foreign Language Programs.
Frequency: Annually.
Affected Public: Not-for-profit organizations; State, Local or Tribal Governments.
Reporting Burden:
Responses: 1,500.
Burden Hours: 180,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State and local Educational agencies, institutions of higher education, and community-based organizations to apply for funding under the Bilingual Education and Foreign Language Programs. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of the Under Secretary

Type of Review: Expedited.
Title: Application for Emergency Immigrant Education Program.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 57.
Burden Hours: 9,177.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Emergency Immigrant Education Program. The Department will use the information to make grant awards.
Additional Information: Clearance for this information collection is requested for March 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 17, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan Instructions for Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies.
Frequency: Annually.
Affected Public: State, Local, or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 2,080.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: To receive Title I, Part A funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Application for State Grants Under Title VI—Innovative Education Program Strategies.
Frequency: Annually.
Affected Public: State, Local, or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 1,040.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state educational agencies (SEAs) to apply for Title VI grants and to ensure that SEAs fulfill statutory requirements in their State plans.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Application for the State Educational Agency Under Title I of the Safe and Drug-Free Schools and Communities Act (SDFSCA).
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, Local, or Tribal Governments.
Reporting Burden:
Responses: 57.
Burden Hours: 1,824.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The SDFSCA provides Federal financial assistance to SEAs and Governor's Offices for grants to local educational agencies and educational service agencies and consortia and community-based organizations to establish, operate, and improve local programs of school drug and violence prevention.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Title II, Dwight D. Eisenhower Professional Development Program Application.
Frequency: Annually.
Affected Public: Not-for-profit; Federal Government; State, Local or Tribal Government.
Reporting Burden:
Responses: 16,604.
Burden Hours: 82,912.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This will be used by State educational agencies and State agencies for higher education to apply for grants under Title II, Part B, Dwight D. Eisenhower Professional Development Program. The program office needs this information to assure that statutory mandates are followed in implementing this program.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Application for Grants Under the Migrant Education Program—Chapter 1.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 31.
Burden Hours: 1,240.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State Education Agencies must submit an application to operate a Migrant Education Program to meet the special education needs of migrant children.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Application for the Office of the Governor Under Title IV of the Safe and Drug-Free Schools and Communities Act (SDFSCA).
Frequency: Annually.
Affected Public: Not-for-profit; State, Local or Tribal Government.
Reporting Burden:
Responses: 57.
Burden Hours: 1,824.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The SDFSCA provides Federal financial assistance to State educational agencies and Governor's Offices for grants to local educational agencies and educational service agencies and consortia and community-based organizations to establish, operate and improve local programs of school drug and violence prevention.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: State Plan Instructions for Title I, Part D Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 52.
Burden Hours: 2,080.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: To receive Title I, Part D funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is

requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Stewart B. McKinney Act—State Plan.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 52.
Burden Hours: 4,420.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The status requires any State desiring to receive a grant under Subtitle B of the McKinney Act to submit a State Plan to the U.S. Secretary of Education for peer review. The State Plan is a mechanism for a State Educational Agency (SEA) to describe how it will provide for the education of homeless children and youth. Respondents will be State Educational Agencies from the 50 states, District of Columbia, and Puerto Rico.
Additional Information: Clearance for this information collection is requested for March 17, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–6130 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 12, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Individuals With Disabilities Education Act (IDEA), Part B Implementation of FAPE Requirements
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 58
Burden Hours: 208,452
Recordkeeping Burden:
Recordkeepers:
Burden Hours: 0
Abstract: This package provides instructions and forms for States to report the setting in which children with disabilities served under IDEA–B receive special education and related services. The Department will use the information to report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Infants and Toddlers With Disabilities Program (Part H) Under the Individuals with Disabilities Education Act (IDEA)
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 54
Burden Hours: 810
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: States are required to submit an annual report to the Secretary from the state lead agency on the status of early intervention programs operating in the state for eligible children. This is to include a description of the services and how funds are budgeted. The Department will use the information to report to Congress.

Office of Postsecondary Education

Type of Review: Revision
Title: Federal Perkins Loan (formerly National Direct Student Loan)
Frequency: Annually
Affected Public: Individuals and households; Business or other for-profit; Not-for-profit institutions
Reporting Burden:
Responses: 17,078
Burden Hours: 12,559
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The conditions under which an institution may defer repayments on a Federal Perkins Loan or a Direct Loan made on or after July 1, 1993 due to economic hardship reasons.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for Title VI National Resource Centers and Foreign Language and Area Studies Fellowships Programs
Frequency: Annually
Affected Public: Not-for-profit institutions
Reporting Burden:
Responses: 137
Burden Hours: 768
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: EDGAR requires grantees to submit annual performance reports. The information in these reports allows the Department to determine

whether grantees have made substantial progress toward their project goals, monitor grant activities, evaluate outcomes of projects and of the programs, determine program priorities, and provide improved technical assistance to the constituency. The respondents are institutions of higher education.

[FR Doc. 95–6125 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: As expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 11, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: 1996 National Household Education Survey (NHES: 96)
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 93,300
Burden Hours: 18,530
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The NHES: 96 will be a telephone survey of households on the topics of Parent/Family Involvement in Education and Adult and Youth Civic Involvement. Respondents will be parents of children age 3 through 12th grade, youths enrolled in grades 6 through 12, and adults age 18 and older. The collection will provide information on the National Education Goals which concern parent involvement (Goals 1 and 8) and citizenship (Goals 3 and 6).

Additional Information: Clearance for this information collection is requested for April 11, 1995. An expedited review is requested in order to perform a field test on April 18–20, 1995 to allow adequate time for retooling the computer-assisted telephone interviewing system and, if necessary, to request any needed changes from the Office of Management and Budget in time for the full scale survey.

[FR Doc. 95–6131 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education; State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Notice extending the closing date for receipt of State applications for fiscal year 1994 funds.

SUMMARY: On July 12, 1994, the Assistant Secretary for Postsecondary Education published a notice in the **Federal Register** (59 FR 35501) that established September 30, 1994 as the closing date for the receipt of applications for fiscal year 1994 funds under the State Postsecondary Review Program (SPRP). The purpose of this notice is to extend the September 30 closing date to March 15, 1995. This will allow States that failed to submit their applications before the previously published deadline date to receive fiscal year 1994 SPRP funds if their applications are received by March 15, 1995. The Secretary takes this action because the Secretary strongly believes that it is important for all States to participate in the SPRP and to begin to review referred institutions, as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Waters, Branch Chief, State Liaison Branch, U.S. Department of Education, 600 Independence Avenue, SW, Room 3036, ROB–3, Washington, DC 20202–5244. Telephone: (202) 708–7417.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–1099a–3.

(Catalog of Federal Domestic Assistance Number 84.267, State Postsecondary Review Program)

Dated: March 8, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–6132 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.031A, CFDA No. 84.031G]

Extension of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year (FY) 1995 for the Strengthening Institutions and Endowment Challenge Grant Programs

The Department of Education published a notice in the **Federal Register** of February 6, 1995 (60 FR 7047) that established March 27, 1995 as the closing date for submission of applications to be designated as an eligible institution under the Strengthening Institutions and

Endowment Challenge Grant programs for Fiscal Year 1995. The Department is reopening and extending the application period to April 3, 1995 because the requisite applications will not be available until March 1, 1995. FOR APPLICATIONS OR INFORMATION CONTACT: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 600 Independence Avenue, S.W., Suite 600, Portals Building, Washington, D.C. 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: March 8, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–6136 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Strategy for Management and Disposal of Greater-Than-Class C Low-Level Radioactive Waste

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Department of Energy, Office of Environmental Management, is soliciting public and stakeholder input to the development of a strategy for management and disposal of greater-than-Class C low-level waste (GTCC LLW). Public workshops to discuss strategy options will be held in April 1995. The Department is inviting interested parties to prepare written input for use in developing the strategy, and to present their views at the workshops.

DATES AND ADDRESSES: Two public workshops are planned for the purpose of obtaining public and stakeholder input to the DOE's strategy for management and disposal of GTCC LLW. Those planning to attend the workshops are requested to notify the identified DOE contact office by telephone to assure adequate meeting room space is provided. Attendees should also notify the DOE in advance of the workshops, if they would like a specific time allocation for presentation of their views or have comments that will be useful in developing the workshop agendas. Dates and locations for the two workshops are as follows:

April 11, 1995—Washington, DC, area (near Dulles International Airport), Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 22071, Telephone (703) 713–1234 or toll-free 1–800–233–1234. A block of lodging rooms for workshop attendees will be held until April 1, 1995, under the heading ''GTCC DOE Strategy Workshop.''

April 13, 1995—Portland, Oregon, Red Lion Hotel Lloyd Center, 1000 N.E. Multnomah, Portland, OR 97232, telephone (503) 281–6111, or toll-free 1–800–541–1111. A block of lodging rooms for workshop attendees will be held until March 29, 1995, under the heading ''GTCC Strategy Workshop.''

The decision to convene two workshops in separate locations was based solely on consideration of attendee convenience; the workshops will be identical in planned format. Each workshop will begin at 8:30 a.m. The morning session will be devoted to presentations by DOE and contractor personnel that provide background information on the GTCC LLW program strategy development, summaries of the two program reassessment reports, and description of the DOE's tentative program management strategy. Adequate time will be allowed during these presentations for question-and-answer discussions pertinent to the material presented. The afternoon session will be devoted to discussion of stakeholder comments and suggestions on the GTCC LLW management and disposal strategy options.

A verbatim transcription will be made of the workshop proceedings. Written comments will also be incorporated into the proceedings, if received by the DOE no later than April 28, 1995. Workshop attendance is not required for submittal of written comments. All stakeholder comments and suggestions, both written and oral, will be addressed by the DOE in further developing and finalizing the GTCC LLW program strategy.

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding this strategy development process, plans for the public workshops, or submittal of comments should be addressed to Mr. Terry L. Plummer, U. S. Department of Energy, Office of Environmental Management (EM–32), Trevion II, Washington, DC 20585–0002, Telephone: (301) 903–7176.

SUPPLEMENTARY INFORMATION:

Background

Greater-Than-Class C low-level waste (GTCC LLW) is commercially generated low-level waste that exceeds the quantitative Class C limits presented in Title 10, Code of Federal Regulations, part 61 (10 CFR 61), entitled ''Licensing Requirements for Land Disposal of Radioactive Waste.'' In accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99–240, referred to herein as ''the Act''), the federal government is responsible for disposal of GTCC LLW that is generated by licensees of the Nuclear Regulatory Commission (NRC). Although the Act does not describe the particular approach or schedule for providing disposal capability, it requires that such disposal must be performed in a facility licensed by the NRC. NRC indicates that this material requires more stringent disposal methods than Class C LLW, and in the absence of specific proposals for disposal of such waste in a disposal site licensed pursuant to part 61 that are approved by the Commission, such wastes must be disposed of in a geologic repository as defined in part 60 (see 10 CFR 61.55(a)(2)(iv)). The Department of Energy (DOE) is assumed to be the Federal agency responsible for GTCC LLW disposal.

Preliminary schedule forecasts indicate that GTCC LLW disposal capability may not be available for about 20 years or more. The DOE recognizes that during that time, some waste generators may be unable to provide continued safe storage for their GTCC LLW while disposal capability is being developed. Therefore, the DOE's strategy to date has maintained an option for DOE acceptance of GTCC LLW for storage prior to disposal, subject to terms and conditions that have not yet been established.

In recent years, GTCC LLW characterization studies have shown that projected GTCC LLW quantities (roughly 2,000 cubic meters through year 2035) are low relative to other radioactive waste types and earlier estimates. In addition, economic evaluations of alternative disposal concepts that would meet 10 CFR 61 licensing requirements have indicated

that the unit costs for separate GTCC LLW disposal would be much higher than is warranted by the low quantities and potential hazards of the waste. Therefore, the DOE initiated a program reassessment activity to identify strategy revisions that could effectively minimize the potential adverse impacts of GTCC LLW management and disposal scenarios.

Relationship to the Department's Preliminary Environmental Impact Statement (PEIS)

The PEIS does not address specific management options for GTCC LLW, but indicates that future options will be developed. These stakeholder workshops will begin the process of identifying GTCC LLW management options. The final management strategy selected for GTCC LLW will be addressed in supplemental National Environmental Policy Act (NEPA) documentation to be consistent with the PEIS.

Strategy Development

Two independent program reassessment activities have been performed under the DOE's GTCC LLW Management Program: (1) a reassessment performed by EG&G Idaho, Inc. (now Lockheed Idaho Technologies Company) was based on proposed resolutions for known programmatic issues, and (2) a reassessment by Rogers and Associates Engineering Corporation postulated approaches for minimizing adverse cost, environmental, institutional, and safety impacts. The results of both reassessment studies have been used by DOE in the tentative selection of a strategy for GTCC LLW management and disposal. Copies of the reassessment reports are available from the DOE upon request.

The Department is evaluating the feasibility of recovering radioactive material, including sealed source material, under the authority of the Atomic Energy Act. DOE is considering a recycle/reuse program for such recovered material that the Nuclear Regulatory Commission (NRC) has identified as material of public health and safety concern. The Department has recovered sealed sources in the past that represented immediate threats to public health and safety at the request of NRC. Supplemental NEPA documentation will be required. Depending on its characteristics, any sealed source material that is not recycled may be added to the inventory of GTCC LLW for disposal.

Strategy Options

(1) Pursue co-disposal of GTCC LLW with spent nuclear fuel and high-level waste in a geologic repository as the preferred co-disposal option. The repository will be an NRC-licensed facility that the NRC deems acceptable for GTCC LLW disposal, as well as for spent nuclear fuel and High Level Waste. Most of the projected GTCC LLW will be generated by nuclear utilities, and these utilities already have entered into Standard Contracts for repository disposal of their spent nuclear fuel and certain nonfuel-bearing components. Co-disposal of the remaining small quantity of non-utility GTCC LLW in the repository should also be feasible.

(2) Pursue co-disposal of GTCC LLW with DOE Special Case Waste as an alternative or supplemental co-disposal option. Some GTCC LLW types may be deemed unsuitable for repository disposal. Therefore, an option for GTCC LLW co-disposal with DOE Special Case Waste will also be maintained. The term Special Case Waste (SCW) denotes DOE waste having characteristics similar to those of GTCC LLW, and generally lacking firm disposal plans. Progress in developing this option will necessarily be tied to the development of disposal plans for DOE's SCW inventory. There is a regulatory issue to be resolved where GTCC LLW requires licensed disposal but SCW does not.

(3) Provide DOE storage capability for small quantities of GTCC LLW that DOE might accept for public health and safety reasons. Nuclear utilities generally have capability, and may prefer, to provide onsite storage capability for their GTCC LLW until disposal capability becomes available. However, some non-utility GTCC LLW generators may be financially unable to provide long-term storage for their GTCC LLW. Therefore, DOE storage for small amounts of GTCC LLW will be provided as needed to mitigate potential public health and safety issues. This contingency storage may be provided in conjunction with DOE's near-term acceptance program for sealed sources.

(4) Develop fee determination and collection methods to recover DOE's costs for GTCC LLW management and disposal. Cost recovery for DOE's GTCC LLW management and disposal services is implied by the Act, and is required by the Nuclear Waste Policy Act of 1982, as amended, for repository disposal. Preliminary information on this subject will be developed using the best available assumptions regarding probable methods for DOE storage, treatment, and disposal.

(5) Develop waste acceptance criteria for GTCC LLW co-disposal options. Waste acceptance criteria will be developed for the GTCC LLW co-disposal scenarios under consideration. These waste acceptance criteria are dependent upon the performance requirements that are imposed on the disposal facility, and may also be subject to constraints imposed by disposal facility design and siting considerations. Thus, the schedule for developing waste acceptance criteria will be tied to that of disposal facility development.

Issued in Washington, DC, on March 7, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–6120 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 94–3 of the Defense Nuclear Facilities Safety Board, Rocky Flats Seismic and Systems Safety

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 94–3, concerning Rocky Flats Seismic and Systems Safety, in the **Federal Register** on October 4, 1994 (59 FR 50581). Section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e) requires the Department of Energy to transmit an implementation plan to the Defense Nuclear Facilities Safety Board by February 25, 1995, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45-days follows.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's notification to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 24, 1995.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004

Dear Mr. Conway: This is to advise you, pursuant to 42 U.S.C. 2286d(e), that the Department of Energy will require an additional 45 days to respond to the Defense Nuclear Facilities Safety Board Recommendation 94–3, regarding seismic and systems safety at the Rocky Flats Environmental Technology Site.

The Department recently made some management changes at the Rocky Flats Environmental Technology Site. Because of these changes, and the need for the development of acceptance criteria for safety adequacy and systems for identifying facility upgrades, more time is necessary to respond. In addition, the Department believes that it is necessary to integrate its response to Recommendation 94–3 with Recommendation 90–5, (Systematic Evaluation Program). The Implementation Plan for Recommendation 94–3 will be provided to the Board by April 10, 1995.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 95–6023 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Notice of Cultural Resources Industry Outreach Training Course

March 7, 1995.

The Office of Pipeline Regulation (OPR) staff will convene another session of its cultural resources compliance training course. The one-day training course will be held on May 3, 1995. The session is being offered in conjunction with the Society for American Archaeology 60th Annual Meeting in Minneapolis, Minnesota, May 3–7, 1995. However, attendance at the course is independent of attendance at the annual meeting for other purposes. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of:

- How the Commission gives the industry and the public an opportunity to assist the Commission in meeting its responsibilities under the National Historic Preservation Act (NHPA) and other historic preservation laws and regulations; and
- What cultural resources information the industry needs to file with the Commission before and after the Commission issues a certificate.

We encourage interested organizations and the public to take advantage of this course.

The course will include the following topics:

- Objectives and requirements of the Commission regarding compliance with § 106 of the NHPA and related historic preservation laws;
- Guidance for reporting on cultural resources investigations;
- Definition of cultural resources terms used by the Commission in the compliance process; and
- Efficient strategies for planning and conducting cultural resources investigations.

OPR's training course will be held at the Minneapolis Hilton and Towers, 1001 Marquette Avenue South, Minneapolis, Minnesota. For hotel reservations, call (612) 376–1000 and identify yourself as an attendee of the course offered in conjunction with the Society for American Archaeology Conference. Special hotel room rates are available until April 11, 1995.

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor, will conduct the training. There is no fee for the course, but you must pre-register. A cultural resources training session is also being planned for Denver, Colorado in September 1995.

If you would like to attend the May 3, 1995 session, or indicate your preference for other courses and locations, please call the telephone number listed below to obtain a pre-registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the Commission's training course.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6078 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–626–000 et al.]

PSI Energy Inc., et al.; Electric Rate and Corporate Regulation Filings

March 6, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER95–626–000]

Take notice that PSI Energy, Inc. (PSI) on February 21, 1995, tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume No. 1 (15th Revision) and Original Volume No. 2 (13th Revision), and its Electric Rate Schedule FERC Nos. 233, 234, 241 and 256.

The proposed changes would increase annual revenues from jurisdictional sales and service by $7,414,000, based on the twelve (12)-month period ending December 31, 1995.

PSI has indicated that the filing of new tariffs and rates has been mandated by inadequate earnings on its jurisdictional sales. The average rate of return on such sales is, in its opinion, inadequate to attract the capital required by PSI to pay for necessary expansion of its electric plant and increased operating expenses. PSI also indicated that the filing has been made to satisfy the requirements of the Federal Energy Regulatory Commission in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, the City of Logansport, Indiana, Jackson County Rural Electric Membership Corporation, the Indiana Municipal Power Agency, the Wabash Valley Power Association, Inc., and the Indiana municipalities of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorton, Veedersburg and Williamsport.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Co.

[Docket No. ER95–635–000]

Take notice that on February 22, 1995, Tucson Electric Power Company (Tucson), tendered for filing a Service Agreement, effective as of January 23, 1995 (the Agreement) between Tucson and Gulfstream Energy (Gulfstream). The Agreement provides for the sale by Tucson to Gulfstream of economy energy from time to time at negotiated rates in accordance with Service Schedule A of Tucson's Coordination Tariff, Volume 1, Docket No. ER94–1437–000. Tucson requests an effective date of January 23, 1995, and therefore requests any applicable waivers.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Co.

[Docket No. ER95–636–000]

Take notice that on February 22, 1995, Tucson Electric Power Company

[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

(Tucson) tendered for filing a Service Agreement, effective as of January 23, 1995 (the Agreement) between Tucson and Electric Clearinghouse, Inc. (Clearinghouse). The Agreement provides for the sale by Tucson to Clearinghouse of economy energy from time to time at negotiated rates in accordance with Service Schedule A of Tucson's Coordination Tariff, Volume 1, Docket No. ER94–1437–000. Tucson requests an effective date of January 23, 1995, and therefore requests any applicable waivers.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corp.

[Docket No. ER95–637–000]

Take notice that on February 22, 1995, that New York State Electric & Gas Corporation (NYSEG), tendered for filing as an initial rate schedule, an agreement with Vermont Public Power Supply Authority (VPPSA). The Agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to VPPSA and VPPSA will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on February 23, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and VPPSA.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–638–000]

Take notice that on February 22, 1995, PacifiCorp tendered for filing a Notice of Termination of Supplement No. 21 to PacifiCorp's Rate Schedule FERC No. 123.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER95–639–000]

Take notice that on February 22, 1995, Entergy Services, Inc. (Entergy Services) on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Central and South West Services, Inc., acting as agent for Southwestern Electric Power Company (SWEPCO). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide SWEPCO non-firm transmission service under Entergy Services Transmission Tariff.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. ICPM, Inc.

[Docket No. ER95–640–000]

On February 23, 1995, pursuant to Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the ''Commission''), 18 CFR Sections 385.205 and 385.207, ICPM, Inc. (''ICPM'') filed a petition for waivers, blanket approvals and an order approving its Rate Schedule No. 1, to be effective within 60 days of the date of filing or on the date of the Commission's Acceptance Letter, whichever is earlier.

ICPM, a subsidiary of Indeck Capital, Inc., intends to engage in the marketing of electric energy and capacity. In such transactions, ICPM will purchase energy and capacity from electric utilities, qualifying facilities and independent power producers and resell such energy and capacity to other purchasers. The rates charged by ICPM will be mutually agreed upon by the parties to each particular transaction.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Co.

[Docket No. ER95–641–000]

Take notice that on February 23, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated February 4, 1995, which established InterCoast Power Marketing Company as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of February 4, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. St. Joseph Light and Power Co.

[Docket No. ER95–642–000]

Take notice that on February 24, 1995, St. Joseph Light & Power Company (SJLP), submitted for filing an addendum to its coordination rate schedules to provide for the recovery of the cost of emission allowances, effective January 1, 1995.

SJLP states that copies of this filing were served on the parties identified in Exhibit II of the filing.

Comment date: March 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER95–643–000]

Take notice that on February 24, 1995, Portland General Electric Company (PGE,) tendered for filing an Unsigned Service Agreement under FERC Electric Tariff, Original Volume No. 2 (PGE–2) with LG&E Power Marketing Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE has requested that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Unsigned Service Agreement to become effective February 27, 1995.

Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: March 20, 1995, 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. 95–6077 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–52–000, et al.]

Granite State Gas Transmission, Inc., et al.; Natural Gas Certificate Filings

March 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Granite State Gas Transmission, Inc.

[Docket No. CP95–52–000]

Take notice that on November 3, 1994, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP95–52–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity and an order authorizing the abandonment of facilities and services, all as more fully set forth in the application and a subsequent supplemental filing which are on file with the Commission and open to public inspection.

Granite State seeks authorization to:

(1) Construct and operate a liquefied natural gas (LNG) tank in the Town of Wells (York County) Maine, with a capacity to store the equivalent of 2 Bcf of natural gas, together with vaporization equipment, metering equipment and delivery lines to deliver vaporized LNG into Granite State's adjacent 8-inch main pipeline;

(2) Provide an LNG storage and vaporization service for its distributor customer, Northern Utilities, Inc. (Northern Utilities) under a proposed Rate Schedule LNG–1 in its FERC Gas Tariff, Third Revised Volume No. 1;

(3) Abandon, upon expiration of the lease on March 31, 1997, the operation of an 18-inch pipeline which Granite State leases from Portland Pipe Line Corporation (Portland Pipe Line) and converted to natural gas service in 1987 under a certificate issued in Docket No. CP87–39–000 [1];

(4) Abandon transportation services provided for Bay State Gas Company (Bay State) and Northern Utilities over the leased pipeline;

(5) Abandon such facilities as Granite State constructed to interconnect the leased pipeline with its pipeline in the vicinity of Portland, Maine;

(6) Abandon Granite State's firm transportation services for Bay State under Rate Schedules FT-NN and FT–1 upon termination of the lease;

(7) Institute a new Rate Schedule FTX for transportation and exchange services rendered to Bay State upon termination of the lease; and

(8) Increase the firm transportation service for Northern Utilities under Rate Schedule FT-NN from 28,768 Dth a day to 78,770 Dth a day coincident with the inauguration of the proposed Rate Schedule LNG–1 service.

According to Granite State, since November 1987, it has received supplies of Canadian gas at the U.S.-Canadian border into a former crude oil pipeline which Granite State leased from its owner, Portland Pipe Line, and converted to natural gas service, pursuant to the certificate issued August 4, 1987 in Docket No. CP87–39–000. The leased 18-inch pipeline extends 166 miles from the border near North Troy, Vermont, to a connection with Granite State's pipeline in the vicinity of Portland, Maine. Granite State says that it receives up to 31,036 MMBtu a day at the border into the leased pipeline, which is immediately resold to Bay State and Northern Utilities, and transported for their accounts over the leased pipeline and pipeline facilities owned by Granite State.

Granite State also states that the proposed 2 Bcf LNG facility will provide the necessary gas supply to maintain gas deliveries to Northern Utilities after the expiration of the extended Portland Pipe Line lease on March 31, 1997. The LNG tank will be filled with LNG purchased and stored for the account of Northern Utilities. Northern Utilities intends to purchase its LNG supply from Distrigas of Massachusetts Corporation (DOMAC) and take delivery at DOMAC's marine terminal in Everett, Massachusetts, in cryogenic tank trucks for over-the-road transportation to the site of the facility in the Town of Wells. Granite State says that it will construct the facility, which is estimated to cost $44,221,000, and store and vaporize the LNG for Northern Utilities pursuant to a new incremental Rate Schedule LNG–1 in its FERC Gas Tariff, Third Revised Volume No. 1, which is submitted with its application. Granite State proposes to finance the construction phase of the LNG facility with short-term loans, and permanent financing will consist of long-term loans and equity contributed by its parent, Bay State.

The projected date for the receipt and storage of LNG for the account of Northern Utilities is September 1997. Granite State further says that, coincidental with the in-service date, it will increase the firm transportation service for Northern Utilities under Rate Schedule FT-NN from 28,768 Dth per day to 78,770 Dth per day, reflecting the transportation of the vaporized gas in its pipeline.

Because the configuration of its operations will change significantly after the expiration of the Portland Pipe Line lease on March 31, 1997, and Bay State's actual use of Granite State's pipeline system will be reduced, Granite State says that it will abandon its existing Rate Schedule FT-NN and Rate Schedule FT–1 services for Bay State and substitute a new Rate Schedule FTX which will reflect the on-going use of its system by Bay State.

Granite State's application contains an estimated initial Deliverability Charge, a Capacity Charge and a Vaporization Charge for its firm Rate Schedule LNG–1 service, and an estimated rate for interruptible storage and vaporization service based on the cost of service for operating and maintaining the LNG facility. Granite State says that Northern Utilities will own all the LNG in the tank (except for the heel), and Granite State's entire initial capability to store and deliver vaporized LNG as proposed in the application would be required by Northern Utilities as a replacement supply of gas after March 31, 1997, barring another extension of the Portland Pipe Line lease. Granite State also says that it will not offer Rate Schedule LNG–1 service to other customers on a firm basis. Granite State further says that it operates as a restructured pipeline under Part 284 of the Commission's regulations and intends to offer interruptible storage, vaporization and transportation utilizing the LNG facility. According to Granite State, ninety days before the in-service date of the LNG facility, it will file initial rates with the Commission for its incremental Rate Schedule LNG–1 service.

Comment date: March 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP95–224–000]

Take notice that on February 23, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–224–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate bi-directional facilities in Acadia Parish, Louisiana to be used for receipt and delivery of natural gas under Trunkline's blanket certificate authorizations issued in Docket Nos. CP83–84–000 and CP86–586–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the

[1] 40 FERC ¶ 61,165.

Commission and open to public inspection.

Trunkline proposes to construct and operate a 16-inch tee-tap and 16-inch pipe valve on its Line 300–1–26'' located in Acadia Parish, Louisiana. Trunkline states that it would also install 50 feet of 16-inch pipeline extending from the tee-tap to its right-of-way. Trunkline mentions it would use these facilities to inject and withdraw up to 300 MMCF of gas per day at the LA1 Storage Field owned by Egan Gas Storage Company, Inc (Egan). Trunkline asserts that the $195,000 cost of its proposed facilities would be reimbursed by Egan. Trunkline also states that Egan would install and own 1,100 feet of 16-inch pipeline and a new metering and regulating station to enable Trunkline to use the LA1 Storage Field.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Mojave Pipeline Company and Kern River Gas Transmission Company

[Docket No. CP95–229–000]

Take notice that on March 1, 1995, Mojave Pipeline Company (Mojave), P.O. Box 10269, Bakersfield, California 93389, and Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–229–000 a joint request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization for Kern River to abandon by transfer to Mojave and for Mojave to own and operate a 4/11 interest in certain tap, metering and appurtenant facilities for the delivery of gas to Bear Mountain Limited at a point located in the City of Bakersfield, California, under Kern River's and Mojave's blanket certificates issued in Docket Nos. CP89–2048 and CP89–002, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The applicants state that the portion of Kern River and Mojave's facilities that runs from Daggett, California to the terminal points in Kern County is jointly-owned by Kern River and Mojave as tenants-in-common (Common Facilities). The applicants also state that on October 28, 1994, Kern River made a prior notice filing in Docket No. CP95–44–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations to construct, own and operate the Bear Mountain Delivery Point. It is further stated that no person filed a protest within the time specified by the Commission's Regulations, thus Kern River has obtained the necessary authorization through the operation of Sections 157.205 and 157.212.

The applicants state that the instant filing is necessary to implement a subsequent agreement between Mojave and Kern River to transfer a 4/11 ownership interest in the Bear Mountain Delivery Point facilities to Mojave. It is stated that this transfer will provide for the same percentage ownership in the Bear Mountain Delivery Point facilities that currently exists for the Common Facilities, including all existing delivery points located on and included within the Common Facilities. The applicants state that the transfer will conform ownership interests in the Bear Mountain Delivery Point to all other Common Facility delivery points and will thereby facilitate uniform cost allocations and accounting treatment of the Common Facilities pursuant to the Construction, Operation and Maintenance Agreement (COM Agreement) among Mojave, Kern River and Mojave Pipeline Operating Company (MPOC). In order to effectuate this transfer, Kern River requests that it be authorized to abandon by transfer to Mojave, and Mojave requests that it be authorized to acquire from Kern River and to own and operate, a 4/11 interest in the Bear Mountain Delivery Point facilities. It is stated that following transfer of the 4/11 interest in the facilities, both Kern River and Mojave shippers will be permitted to deliver gas to Bear Mountain, in accordance with the provisions of the COM Agreement regarding delivery points located on the Common Facilities.

It is stated that following completion of construction, the Bear Mountain Delivery Point will consist of a 6-inch tap, a meter station with two 4-inch meter tubes and appurtenant facilities, and an 150-foot section of 6-inch lateral pipeline located immediately downstream of the meter station.

It is stated that the deliver point will have a nominal design capacity of 12,500 Mcf per day. It is further stated that the delivery point will be operated and maintained on behalf of Mojave and Kern River by MPOC as operator of the Common Facilities pursuant to the COM Agreement.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP95–230–000]

Take notice that on March 1, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP95–230–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon a sales meter station in Las Animas County, Colorado, under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

CIG proposes to abandon its Trinidad Power Plant Sales Meter Station [2] by sale to the City of Trinidad. CIG states that it would sell the meter station to the City of Trinidad at the net book value of $1,314. CIG would continue to deliver natural gas to the City of Trinidad via the meter station following the sale of the facilities.

Comment date: April 20, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ozark Gas Transmission System

[Docket No. CP95–231–000]

Take notice that on March 1, 1995, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon service rendered to Columbia Gas Transmission Corporation (Columbia) under Ozark's Rate Schedule T–1, certificated in Docket No. CP78–532.[3] In addition, in its application, Ozark requests permission and approval to charge Columbia a negotiated Exit Fee in consideration for Ozark's agreement to the early termination and abandonment of Ozark's Rate Schedule T–1 service for Columbia,[4] and to the extent authority is necessary, to refund excess deferred income taxes that Ozark owes or will owe to Columbia and to receive from Columbia payment of previously unpaid demand charges owed to Ozark. The proposed abandonment of service would be effective upon the date both the Bankruptcy Court [5] and the Commission have issued final orders approving a Stipulation negotiated between Columbia and Ozark dated December 9, 1994 in form and substance satisfactory to Ozark and Columbia. The Stipulation is pending before the Commission in

[2] *See* order at 22 FPC 828 (1959).

[3] *See*, 16 FERC ¶ 61,099 (1981).

[4] Ozark states the contract expires February 28, 1997.

[5] Ozark states that all obligations of Columbia are subject to Chapter 11 procedures in Case Nos. 91–803 and 91–804 in the United States Bankruptcy Court for the District of Delaware.

Docket No. RP95–98–000.[6] The application is on file with the Commission and open to public inspection.

Comment date: March 27, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Co.

[Docket No. CP95–234–000]

Take notice that on March 1, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–234–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities in Essex County, Massachusetts under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install, own, operate, and maintain data acquisition and control equipment, one six-inch hot tap assembly, approximately 2,100 feet of 8 inch pipe, and measurement facilities in order to deliver gas to Colonial Gas Company.

Comment date: April 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6079 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–P

[6] Filed December 20, 1994.

[Docket No. GT95–27–000]

Mississippi River Transmission Corp.; Notice of Proposed Flowthrough of Account No. 858 Refund

March 7, 1995.

Take notice that on March 3, 1995, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the proposed flowthrough of an Account No. 858 refund received by MRT from Panhandle Eastern Pipe Line Company.

MRT states that subject to the receipt of Commission approval it proposes to refund by check on April 7, 1995, each customer's respective portion of the refund including interest through April 6, 1995.

MRT states that a copy of this filing is being mailed to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1995. 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. 95–6035 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–186–000]

Natural Gas Pipeline Co. of America; Notice of Report on Storage Utilization

March 7, 1995.

Take notice that on March 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing its report on storage utilization during the first year of Natural's operation under Order Nos. 636, *et seq.*

Natural states that the report is responsive to four specific requirements set out in Natural's restructuring orders in Docket No. RS92–45.

Natural states that copies of the filing are being mailed to each of Natural's customers, and the parties in Docket No. RS92–45–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 10426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6036 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–004]

NorAm Gas Transmission Co.; Notice of Filing

March 7, 1995.

Take notice that on March 2, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective February 1, 1995:

Second Sub Original Sheet No. 9
Substitute Original Sheet No. 35
Original Sheet No. 35A
Substitute Original Sheet No. 127
Original Sheet No. 127A
Substitute Original Sheet No. 215
Original Sheet No. 215A
Substitute Original Sheet No. 225
Substitute Original Sheet No. 226
Original Sheet No. 226A
Substitute Original Sheet No. 236

NGT is modifying Sections 5.7(c)(ii)(3), 10.1, 10.3, and 14.1 of NGT's General Terms and Conditions, and Section 2.4 of Rate Schedule PS, in compliance with the Commission's January 31, 1995 Order Ruling on Tariff Terms and Conditions in this matter. The modification of Section 2.4 of Rate Schedule PS and Section 5.7(c)(ii)(3) permits shippers to net monthly imbalance volumes across zones. The modification of Section 14.1 deletes language providing for a set-off by NGT against amounts owed to its shippers. The revisions to Sections 10.1 and 10.3 clarify sections of the General Terms and Conditions dealing with the acceptance of service requests and nominations and with changes in economic value under service agreements.

NGT is also revising Section 3.1(e) of Rate Schedule FT and its NNTS Out-of-Zone Adjustment rates to correct an error that would have resulted in overcharges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6037 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–199–000]

NorAm Gas Transmission Co.: Notice of Filing

March 7, 1995.

Take notice that on March 2, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of April 1, 1995:

Second Revised Sheet No. 13

NGT states that these tariff sheets are filed in compliance with Section 5.7(c)(ii) (2) (B), Second Revised Sheet Nos. 214 and 215 of NGT's tariff.

Pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period October through December 1994.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before March 14, 1995. 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. 95–6038 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–198–000]

Northwest Pipeline Corp.; Notice of Petition for Grant of Expedited Limited Waiver of Tariff

March 7, 1995.

Take notice that on March 7, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Expedited Limited Waiver of Tariff.

Northwest seeks waiver of Section 25.3(a) of the General Terms and Conditions addressing posting of available pipeline capacity and Section 11.3 of Rate Schedule TF–1 addressing the availability for receipt and delivery changes of capacity associated with expiration of a firm transportation contract, both set forth in Third Revised Volume No. 1 of Northwest's FERC Gas Tariff, as well as waiver of any other necessary tariff provisions, in order to allow Northwest to repost the availability of 25,000 MMBtu/day of capacity and to defer disposition of such capacity until after March 20, 1995.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6039 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–232–000]

Ozark Gas Transmission System; Notice of Application

March 7, 1995.

Take notice that on March 1, 1995, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, LB–10, Dallas, Texas 75201, filed in Docket No. CP95–232–000, an application pursuant to Section 7 (b) and (c) of the Natural Gas Act (NGA) for permission and approval to abandon the transportation of natural gas for Tennessee Gas Pipeline Company (Tennessee) under Rate Schedule T–1, and for a certificate of public convenience and necessity authorizing the acquisition of a lateral line from Tennessee and the charge of an Exit Fee in consideration for Ozark's

agreement to the early termination of transportation of transportation service under Rate to the early termination of transportation service under Rate Schedules T–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark states that pursuant to a Transportation Agreement between Ozark and Tennessee dated March 1, 1982, (Agreement), Ozark provides Tennessee firm transportation of a maximum daily volume of fifty percent of Ozark's capacity or 85,000 Mcf per day under Ozark's Rate Schedule T–1. Ozark states that Columbia Gas Transmission Corporation (Columbia) is entitled to the remaining fifty percent of Ozark's capacity under Rate Schedule T–1. Ozark asserts that the Agreement expires on February 28, 1997. Ozark further asserts that Order No. 636 virtually eliminated Tennessee's merchant function and thereby stranded Tennessee's capacity on Ozark.

Ozark states that pursuant to a Stipulation dated December 9, 1994, Ozark and Tennessee agreed to the terms and conditions for the early termination of the Agreement. Ozark states the terms of the Stipulation include Ozark's abandonment of service to Tennessee under Rate Schedule T–1, Ozark's acquisition of Tennessee's X3–100 lateral line; and Ozark's charging Tennessee a negotiated exit fee. Ozark requests authority to implement the terms of the Stipulation. Ozark states that the Stipulation would be effective upon the date the Commission has issued final orders approving without modification both this Stipulation and the stipulation between Ozark and Columbia also dated December 9, 1994, setting forth the terms and conditions of Ozark's abandonment of firm transportation to Columbia under Rate Schedule T–1. Ozark further states that Tennessee filed in Docket No. RP95–144 on January 27, 1995 for approval of the Stipulation and Columbia filed in Docket No. RP95–98 on December 20, 1994 for approval of the stipulation between Ozark and Columbia.

Ozark requests that the order approving the Stipulation authorize under specific circumstances the reinstatement of the Agreement; service under the Agreement; and Ozark's minimum bill and demand charges.

Ozark states that the proposed Exit Fee would be calculated using a formula set forth in the Stipulation. Ozark further states the amount which Tennessee would be obligated to pay pursuant to the Exit Fee formula would depend on the date the Stipulation becomes effective and the amount of excess capacity at that time.

Ozark states that the X3–100 lateral line consists of 4.76 miles of 12-inch line that interconnects Ozark with Texas Eastern Transmission Corporation. Ozark states that Tennessee would no longer have any use for this line after the abandonment of Ozark's service to Tennessee. Ozark proposes to acquire the line from Tennessee at a price equal to the lower of $1.7 million or the actual net book value of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its won motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ozark to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6040 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–55–004]

Trailblazer Pipeline Co.; Notice of Refund Report

March 7, 1995.

Take notice that on February 16, 1995, Trailblazer Pipeline Company (Trailblazer) filed its Report of Distribution of Refunds for Docket No. RP93–55 for the period August 1, 1994 through October 31, 1994.

Trailblazer states that the refund was made in compliance with the provisions of Article 2.4 of the Stipulation and Agreement (Settlement) filed on August 19, 1994 in the above-referenced proceeding and was approved by a Commission order issued October 31, 1994. On December 30, 1994, Trailblazer paid its jurisdictional customers the refunds owed to them.

Trailblazer states that copies of the filing were served upon each of Trailblazer's jurisdictional customers, intervenors and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6041 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–245–000]

West Texas Utilities Co.; Notice of Filing

March 7, 1995.

Take notice that on March 3, 1995, West Texas Utilities Company (WTU) tendered for filing an amendment to its Coordination Sales Tariff, filed November 30, 1994. Under the Coordination Sales Tariff, WTU will make Economy Energy, Short-Term Power and Energy, General Purpose Energy and Emergency Service available to customers upon mutual agreement. The amendment lowers the rate for purchase and resale transactions.

WTU has asked for an effective date of January 31, 1995. Copies of this filing were served on the Public Utility

Commission of Texas and are available for public inspection at WTU's offices in Abilene, Texas.

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 March 17, 1995. 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. 95–6042 Filed 3–10–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–15: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). The HGP is a coordinated, multidisciplinary, goal-oriented, research effort aimed at improving technologies that will lead to a detailed understanding of the human genome at the molecular level. This particular research notice encompasses research grants that address ethical, legal, and social issues that may arise from the use of information and knowledge resulting from the HGP.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., July 13, 1995, to be accepted for merit review in September 1995 and to permit timely consideration for award in Fiscal Year 1996.

ADDRESSES: Formal applications referencing Program Notice 95–15 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, D.C. 20585, Attn: Program Notice 95–15. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Office of Energy Research, U.S. Department of Energy, Washington, D.C. 20585, (301) 903–6488.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications to conduct multidisciplinary, empirical research on privacy issues from the creation, use, maintenance, and disclosure of genetic information. This may include (but is not limited to) issues of ownership and control of genetic information and the protection of the privacy of genetic information in various settings including the workplace. Applications should demonstrate knowledge of the relevant literature and should include detailed plans for the gathering and analysis of factual information and the exploration of the specific issues of interest. All applications should include, where appropriate, detailed discussion of human subjects protection issues; e.g., storage of, manipulation of, and access to data. Where appropriate, provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience.

The DOE is also soliciting applications for the preparation and dissemination of educational materials in any appropriate medium that will enhance public understanding of both the scientific aspects and the ethical, legal, and social aspects of the HGP. In addition, the DOE is encouraging applications for the support of conferences focusing on specific issues or areas of concern related to the ethical, legal, and social implications of the HGP. This may include (but is not limited to) implications of advances in the genetic characterization of complex traits and diseases. Educational and conference applications should also demonstrate awareness of the relevant literature, and include detailed plans for the accomplishment of project goals, including, where appropriate, video productions. In the case of applications that propose the production of series for broadcast, audiovisuals or other educational materials, the DOE strongly recommends that samples of previous similar work by the producers and writers be submitted along with the application. In the case of all educational activities, the DOE strongly recommends inclusion of assessments of effectiveness of the proposed activities. In the case of all conferences, a fairly detailed and complete roster of committed speakers is necessary. At the completion of the conference, a summary or report is required. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience.

Potential applicants are strongly encouraged to submit a brief preapplication, in accordance with 10 CFR 600.10(d)(2), that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications referencing Program Notice 95–15 should be received by April 13, 1995, and sent to Dr. Daniel W. Drell, Office of Health and Environmental Research, ER–72 (GTN), Washington, D.C. 20585. Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 30 days of receipt.

It is anticipated that approximately $700,000 will be available for grant awards during FY 1996, contingent upon availability of appropriated funds. Multiple-year funding of grant awards is expected and is also contingent upon availability of funds. Previous awards have ranged from $60,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years. Similar award sizes are anticipated for new grants.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The Application Guide is available from the

U.S. Department of Energy, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72 (GTN), Washington, D.C. 20585. Telephone requests may be made by calling (301) 903–6488.

As part of its grant regulations, ER requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (51 FR 16958, May 7, 1986) or such later revision of those guidelines as may be published in the **Federal Register**.

The dissemination of materials and research data in a timely manner is essential for progress towards the goals of the DOE Human Genome Program. The OHER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OHER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 95–6107 Filed 3–10–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5169–7]

Acid Deposition Standard Feasibility Study

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment on draft report.

SUMMARY: EPA announces a 21-day (3 week) extension of the public comment period for the draft report entitled The Acid Deposition Standard Feasibility Study. The report is required by Section 404, Appendix B of the Clean Air Act (CAA). The extension begins on March 12, 1995, the day after the original 30-day public comment period is due to expire, and will expire on April 1, 1995.

ADDRESSES:

Availability: To obtain a copy of the draft Report to Congress contact the Office of Air and Radiation Docket and Information Center at 202–260–7548 or 202–260–7549 or by fax at 202–260–4400. Refer to Docket # AR–95–01.

Comments: Written statements should be submitted (in duplicate if possible) to: Rona Birnbaum, Acid Rain Division (6204–J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rona Birnbaum, Acid Rain Division (6204–J), Office of Atmospheric Programs, Office of Air and Radiation. U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Telephone (202) 233–9076.

Dated: March 6, 1995.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 95–5985 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5170–8]

Acid Rain Program: Notice of Final New Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final new unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year new unit exemptions in accordance with the Acid Rain Program regulations (40 CFR part 72) to the following 9 utility units at 4 plants in Minnesota: Alliant Techsystems unit 1; Blue Earth Water and Light Department units 7, 8, and 9; United Health Care units 1 and 2; and United Hospital units 5, 6, and 7.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 353–7316, EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: February 24, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–6109 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

[WH-FLR–5170–7]

Tribal Assistance; Grants for Wastewater Facility Construction for Native American Tribes Under Section 518(c) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Changes in the Guidelines for Applying for Grants from the Indian Set-Aside Program.

SUMMARY: This notice announces: the use of the Sanitary Deficiency System (SDS) of the Indian Health Service (IHS) for determining priorities and selecting projects for funding under the Indian Set-Aside (ISA) Program; and the availability of an Addendum detailing changes in the process for applying for grants from the ISA program.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Bell, Municipal Support Division, Office of Wastewater Management (202) 260–7255.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency, Office of Wastewater Management, manages an Indian Set-Aside Grant Program under Section 518(c) of the Clean Water Act. Public Law 102–389 allows the Administrator to reserve up to one-half of one percent of the funds appropriated for Fiscal Year 1993 and, thereafter, from the State Revolving Fund for making grants to Indian Tribes and Alaska Native Villages. The grants are for construction of wastewater treatment facilities. The SDS, which is the current IHS system of identifying wastewater treatment needs and costs, will be used to determine priorities and to select projects to receive funding for Fiscal Year 1995 and thereafter. The Addendum to the ''Guidelines for Applying for Grants from the Indian Set-Aside Program'' details several changes in the ISA Program as a result of EPA's adoption of the SDS. The Addendum may be obtained by calling Sylvia Bell at (202) 260–7255.

Dated: March 6, 1995.

Robert Perciasepe,

Assistant Administrator Office of Water.

[FR Doc. 95–6111 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5169–1]

Report on the Status of Urban Area Source Research Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the public availability of an EPA report

titled ''EPA's Urban Area Source Research Program—A Status Report on Preliminary Research.'' The Clean Air Act calls for EPA to produce this report.

DATES: This report will be available at the addresses indicated below on March 13, 1995.

ADDRESSES: Copies of the report may be obtained by writing or phoning: March 13, 1995 to April 15, 1995:

Ms. Gloria J. Koch, Technical Information Officer, Atmospheric Research and Exposure Assessment Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919–541–4109

After April 15, 1995: U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Dr. Larry T. Cupitt, Director, Methods Research and Development Division, Atmospheric Research and Exposure Assessment Laboratory (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919–541–2454.

SUPPLEMENTARY INFORMATION: EPA is announcing the public availability of a report titled ''EPA's Urban Area Source Research Program—A Status Report on Preliminary Research.'' The report was called for under section 112(k) of the Clean Air Act, 42 U.S.C. 7412(k). Issuance of the report does not represent final agency action.

The report summarizes the status of the Agency's urban area source research program. The report presents the preliminary research findings on area sources of hazardous air pollutants located in urban areas. The report does not make EPA policy determinations about area sources as possible sources of hazardous air pollutants and does not affect any legal rights or impose any obligations. Information collected through the research program will be considered by the Administrator when developing the national urban area source strategy required by Section 112(k)(3) of the Clean Air Act.

Dated: March 3, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–5988 Filed 3–10–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

AMBANC Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 6, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. AMBANC Corp., Vincennes, Indiana; to merge with First Robinson Bancorp, Robinson, Illinois, and thereby indirectly acquire The First National Bank in Robinson, Robinson, Illinois.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6071 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

Larch Bancorporation, Inc., et al.; Acquisition of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 27, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Larch Bancorporation, Inc., Larchwood, Iowa; to acquire from its subsidiary Security Savings Bank, Parchwood, Iowa, Security Insurance Agency, Inwood, Iowa, and thereby engage in general insurance activities in a town of less than 5,000. These activities will be conducted in Inwood, Illinois, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire United Financial Bancorp, Inc., Vincennes, Indiana, and United Federal Savings Bank of Vincennes, Vincennes, Indiana, and thereby engage in indirectly acquiring, controlling, and operating a federally-chartered savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Turner Bancshares, Inc., Belgrade, Missouri; to acquire HDJ Turner Company, Potosi, Missouri, previously

operating as Potosi Abstract, Potosi, Missouri, and thereby engage in the sale of title insurance in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in Potosi, Missouri.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Ainsworth Company, Ainsworth, Nebraska; to engage in performing insurance activities in a town having a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Bassett, Nebraska.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6072 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation, Pittsburgh, Pennsylvania; Application to Engage in Certain Nonbanking Activities

Mellon Bank Corporation, Pittsburgh, Pennsylvania (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire the shares of Mellon Investment Products Corporation (Company) from its subsidiary bank, Mellon Bank, N.A. (Bank), both of Pittsburgh, Pennsylvania, and to engage in the following activities:

1) Underwriting and dealing to a limited extent in municipal revenue bonds (including certain industrial development bonds and unrated municipal revenue bonds), mortgage-related securities, consumer-receivable-related securities and commercial paper;

2) Underwriting and dealing in bank-eligible instruments pursuant to 12 CFR 225.25(b)(16);

3) Acting as agent in the private placement of securities, including providing related advisory services;

4) Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;

5) Providing securities brokerage services pursuant to 12 CFR 225.25(b)(15), including selling bank-ineligible securities underwritten or dealt in by Company to retail customers;

6) Providing investment advisory services pursuant to 12 CFR 225.25(b)(4); and

7) Providing foreign exchange advisory and transactional services pursuant to 12 CFR 225.25(b)(17).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984).

Applicant maintains that the Board previously has determined that the proposed activities are closely related to banking. *See* 12 CFR 225.25 (b)(4), (15), (16) & (17); *PNC Financial Corp.*, 75 Federal Reserve Bulletin 396 (1989) (section 20 company providing securities brokerage services to retail customers with respect to bank-ineligible securities underwritten or dealt in by the section 20 company); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989)(acting as agent in the private placement of securities and purchasing and selling securities on the order of investors as a riskless principal); *Citicorp*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom.* Securities Industry Ass'n v. Board of Governors of the Federal Reserve System, 839 F.2d 47 (2d Cir. 1988), *cert. den.*, 486 U.S. 1059 (1988), and *Chemical New York Corporation*, 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing to a limited extent in municipal revenue bonds (including certain industrial development bonds), mortgage-related securities, consumer-receivable-related securities and commercial paper); and Letter dated December 5, 1994, to Bruce Moland, Assistant General Counsel, Norwest Corporation, from William W. Wiles, Secretary of the Board (underwriting and dealing to a limited extent in unrated municipal revenue bonds). Applicant states that it would conduct the proposed activities in accordance with the Board's orders, regulations and related interpretations, with two exceptions. In particular, Applicant proposes to establish up to two interlocking directors between Bank and Company. These directors would not be officers or employees of either Bank or Company. Applicant maintains that the Board previously has permitted similar interlocks. *See SunTrust Banks, Inc.*, 80 Federal Reserve Bulletin 938 (1994). Applicant also proposes that Company be permitted to have offices in buildings in which Bank also has offices. Applicant states that it would take a number of steps to ensure that Company's offices are separate and distinct from those of Bank.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company ''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.'' 12 U.S.C. 1843(c)(8). Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and enable Applicant to offer its customers a broader range of products. Applicant also maintain that its proposal would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles,

Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, March 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6073 Filed 3–10–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the ''Business Opportunity Development Act of 1988'' (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars warded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from January 1, 1994 to December 31, 1994. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after April 1, 1995.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9 and the National Capital Region in SIC Group 15, Regions 2, 5 and 9 for individual SIC code 1794, and Regions 1, 3, 4, 5, 7, 9 and the National Capital Region for individual SIC code 1796) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 1, 2, 5, 6, 7, 9, and the National Capital Region, for individual SIC code 1794 in Regions 2, 5 and 9, and for individual SIC Code 1796 in Regions 1, 3, 4, 5, 7, 9, and the National Capital Region, shall be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William In Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (all PSC Codes under the Demonstration Program):

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Region 4 for service code C119, and in Region 9 for service code C219) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in Region 4 for service code C119 and in Region 9 for service code C219 shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: March 2, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–6113 Filed 3–10–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0059]

Drug Export; Abbott HTLV–I/HTLV–II EIA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories, Inc., has filed an application requesting approval for the export of the human biological product HTLV–I/HTLV–II EIA to Australia, Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Inc., One Abbott Park Rd., Abbott Park, IL 60064, has filed an application requesting approval for the export of the human biological product Abbott HTLV–I/HTLV–II EIA to Australia, Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, and The United Kingdom. The test is intended as a screen for donated blood to prevent transmission of HTLV–I and HTLV–II to recipients of cellular blood products and as an aid in the clinical diagnosis of HTLV–I and HTLV–II related diseases. The application was received and filed in the Center for Biologics Evaluation and Research on January 9, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 23, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 28, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–6127 Filed 3–10–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting 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 meeting is announced:

Blood Products Advisory Committee

Date, time, and place. March 15, 1995, 1:30 p.m., Food and Drug Administration, Nicholson Lane Research Center, conference room 244B, 5516–B Nicholson Lane, Kensington, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, March 15, 1995, 1:30 p.m. to 2:35 p.m.; closed committee deliberations, 2:35 p.m. to 3:35 p.m.; open public hearing, 3:35 p.m. to 4:35 p.m., unless public participation does not last that long; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion. The committee will discuss the intramural scientific program of the Laboratory of Hepatitis, Division of Transfusion Transmitted Diseases.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

FDA regrets that it was unable to publish this notice 15 days prior to the meeting held on March 15, 1995, due in part to scheduling conflicts. FDA is giving less than 15 days public notice of this Blood Products Advisory Committee meeting because the agency believes that it is in the public interest to provide committee input into the FDA process for reviewing intramural research, even if there is not sufficient time for the customary 15-day public notice. FDA does not believe it appropriate to wait until the next available regularly scheduled meeting of the committee on June 22 and 23, 1995.

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: March 8, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–6126 Filed 3–8–95; 4:20 pm]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting 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 meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. March 17, 1995, 3 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 3 p.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; 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, 301–827–0314, 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.

Open committee discussion. The committee will discuss the influenza virus vaccine formulation for 1995–1996.

FDA regrets that it was unable to publish this notice 15 days prior to the March 17, 1995, Vaccines and Related Biological Products Advisory Committee meeting because of the need to update the committee on late developing influenza activity and to formulate a vaccine for the 1995–1996 year based on that data while providing manufacturers sufficient lead time to develop and produce the vaccine. This meeting is a followup to the January 1995 advisory committee meeting. The agency decided that it was in the public interest to hold this meeting in mid-March even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings 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. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open 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.

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: March 7, 1995

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–6061 Filed 3–10–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–833–N]

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces two meetings of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The meetings are open to the public.

DATES: The March meeting is scheduled for March 22, 1995, from 10 a.m. until 5 p.m. e.s.t., and March 23, 1995, from 9 a.m. until 3 p.m. The April meeting is scheduled for April 11, 1995, from 10 a.m. until 5 p.m. e.s.t., April 12, 1995, from 9 a.m. until 5 p.m., and April 13, 1995, from 9 a.m. until 3 p.m.

ADDRESSES: The meetings will be held at the Sheraton City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Jennifer Carter, (410) 966–4615.

SUPPLEMENTARY INFORMATION: Under the authority of the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648, 5 U.S.C. 581–590), the Secretary of the Department of Health and Human Services has established the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will make recommendations with respect to the content of a proposed rule on the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. The Committee consists of representatives of interests that are likely to be significantly affected by the proposed rule.

The Committee will meet on March 22–23 and April 11–13, 1995. The Committee will undertake the following activities:

- Discussion of analyses using Bureau of Labor Statistics data.
- Review issues in light of the BLS and hospital data.
- Attempt to develop a consensus document.

Individuals or organizations who wish to attend the meeting or make oral presentations may do so. However, the number of presentations may be limited by the time available. Individuals may also submit written statements for the Committee's consideration. For information on how to do this, please contact the Committee facilitator, Judy Ballard at (202) 690–7419.

(Section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: March 7, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–6083 Filed 3–8–95; 12:34 pm]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: March 29, 1995.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 352, Telephone Conference.
Contact Person: Dr. Gertrude McFarland, Scientific Review Admin., 5333 Westbard Ave., Room 352, Bethesda, MD 20892; (301) 594–7080.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 11, 1995.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., Room 226, Bethesda, MD 20892; (301) 594–7167.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 12, 1995.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., Room 226, Bethesda, MD 20892; (301) 594–7167.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–6056 Filed 3–10–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Railroad Retirement Board)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for

individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements.

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Railroad Retirement Board (RRB) With Social Security Administration (SSA)

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

To identify supplemental security income recipients and applicants who receive benefits payable by the RRB. For such individuals, the income received due to benefits payable by the RRB may affect eligibility for or the amount of SSI benefits.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(B) and section 1631(f) of the Social Security Act, as amended.

D. Categories of Records and Individuals Covered by the Matching Program

The RRB will provide SSA with a magnetic tape file containing annuity payment information from its system of records entitled Checkwriting Integrated Computer Operation Benefits Payment Master. SSA will then match the RRB data with information maintained in the Supplemental Security Income Record, HHS/SSA/OSR, 09–60–0103.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–6105 Filed 3–10–95; 8:45 am]

BILLING CODE 4190–29

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Amended routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to amend a routine use applicable to SSA's system of records entitled ''Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058.'' The proposed routine use would provide for disclosure from the system of records to the Department of the Treasury, United States Secret Service (USSS), for purposes of investigating crimes (within the jurisdiction of the USSS) involving violations of the Social Security Act. The disclosure under the relevant routine use is currently limited to the Department of Justice (the Federal Bureau of Investigation and United States Attorneys Offices).

We invite public comment on this publication.

DATES: We have filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 3, 1995. The routine use will become effective, as proposed, without further notice April 14, 1995, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. John Kattler, Social Insurance Specialist, Standards and Compliance Branch, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1738.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Routine Use

A. Background

We propose to add a routine use to the system of records entitled ''Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058.'' The proposed routine use is necessary for the USSS to carry out its responsibilities to investigate various crimes involving violations of the Social Security Act.

B. Disclosures to Law Enforcement and Security Agencies

SSA discloses information from this system of records to certain entities that use the information for a purpose that is compatible with the purpose for which SSA collects it. One such category of disclosures is to the Department of Justice (the Federal Bureau of Investigation (FBI) and United States Attorneys Offices) for purposes of investigating or prosecuting violations of the Social Security Act. Disclosures are most often made from the system to investigate or prosecute those violations of section 208 of the Social Security Act (42 U.S.C. 408) involving criminal misuse of the SSN.

SSA proposes to alter the system by amending an existing routine use to authorize disclosure of SSN information to the USSS for use in investigating crimes involving violations of the Social Security Act. We are doing this because the investigative jurisdiction of the USSS includes various offenses which often involve violations of the Social Security Act. These offenses include fraud associated with electronic fund transfers; crimes involving financial institutions; the counterfeiting or fraudulent use of identification documents; the fraudulent use of ''access devices'' such as credit and debit cards; and certain crimes involving computer fraud (18 U.S.C. 1029, 1030, 3056; Pub.L. 101–509, Title

V, section 528, November 5, 1990, 104 S. 1427). In many such cases, violators utilize SSNs which are not their own to obtain credit or apply for goods or services. Because the misuse of the SSN is an integral part of the criminal activities investigated by the USSS, that agency is in a position to pursue the investigation of violations and to recommend prosecution under 42 U.S.C. 408. Without information from SSA, USSS cannot pursue the issue of SSN misuse when it arises during the course of an investigation.

In circumstances involving investigations under the jurisdiction of the USSS, SSA proposes to provide the same SSN information to the USSS that it now provides to the FBI and United States Attorneys Offices when those entities are investigating violations of the Social Security Act.

II. Compatibility of the Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulations (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. The disclosures that will be made under the proposed routine use will facilitate the investigation and prosecution of violations of the Social Security Act which may potentially interfere with effective use of the relevant system of records, thereby adversely affecting Social Security programs dependent upon these records. The disclosures contemplated under this routine use therefore are compatible with the purpose of the accurate and effective administration of Social Security programs, for which the records were collected, and meet the compatibility requirement for routine uses under the Privacy Act.

III. Effect of the Proposed Routine Use on Individuals

As with previous disclosures for similar purposes under the existing routine use, SSA will follow all statutory and regulatory requirements for disclosure. Therefore, we do not anticipate that the proposed disclosures will have any unwarranted effect on the privacy or other rights of individuals.

IV. Other Changes

We are also making some minor corrections for purposes of accuracy.

Dated: March 3, 1995.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201.

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and obtained an SSN and of each individual whose application was supported by documents which are suspected to be fraudulent and are being verified with the issuing agency, or have been determined to be fraudulent.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for SSNs (e.g., name, date and place of birth, sex, both parents' names, and race/ethnic data), and any changes in the information on the applications that are submitted by the SSN holders. It also contains applications supported by evidence suspected or determined to be fraudulent, along with the mailing addresses of the individuals who filed such applications and descriptions of the documentation which they submitted. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Act.

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various title II, XVI, and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;
- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the HHS Health Care Financing Administration for administering Title XVIII claims.

Information in this system is also used by SSA to prevent the processing of an SSN card application for an individual whose application is identified as having been supported by evidence that either:

- Is suspect and being verified, or
- Has been determined to be fraudulent.

With this system in place, clerical investigation and intervention is required. Social Security offices are alerted in case an applicant attempting to obtain an SSN might visit other offices and might attempt to find one which would unwittingly accept fraudulent documentation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Compensation Act and section 218 of the Act.

2. To State welfare agencies, upon written request, of the SSNs of Aid to

Families with Dependent Children applicants or recipients.

3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys Offices, and to the Department of the Treasury, United States Secret Service, for investigating and prosecuting violations of the Social Security Act.

4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Railroad Retirement Board for:

(a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the Internal Revenue Code (IRC) (26 U.S.C. 6103); and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.

10. To the Department of State for administering the Act in foreign countries through facilities and services of that agency.

11. To the American Institute of Taiwan for administering the Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (VA), Philippines Regional Office, for administering the Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Black Lung Benefits Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To VA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by VA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of VA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To the DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to disclosure provisions of the IRC will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to VA or third parties under contract to that agency for the purpose of conducting VA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

30. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

31. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary.

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

32. Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., paper lists, punch cards, Forms SS–5 (Application for an SSN), and systems generated forms); magnetic media (e.g., magnetic tape and disc with on-line access); and in microfilm and microfiche form.

RETRIEVABILITY:

Records of SSN holders are indexed by both SSN and name. Records of applications that have been denied because the applicant submitted fraudulent evidence, or that are being verified because the evidence is suspected to be fraudulent, are indexed either by the applicant's name plus month and year of birth, or by the applicant's name plus the eleven-digit reference number of the disallowed application.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Systems Security Handbook. This includes maintaining the magnetic tapes and discs within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. All tape, discs, microfilm, and microfiche files are updated periodically. Out-of-date magnetic tapes and discs are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Data Support and Enumeration, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown under ''System manager and address'' above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) If the SSN is unknown or no SSN has been assigned because the evidence presented with the application is being verified or has been determined to be fraudulent, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 95–6104 Filed 3–10–95; 8:45 am]

BILLING CODE 4190–29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3870; FR–3798–C–02]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Notice of Fund Availability; Correction of Application Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for fiscal year 1995; correction of application due date.

SUMMARY: On February 24, 1995 (60 FR 10452), the Department published in the **Federal Register**, a Notice of Fund Availability that announced HUD's funding for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages for Fiscal Year 1995. The application due date was computed incorrectly and ends on May 14, 1995, which is a Sunday afternoon. This incorrect date appears in the ''DATES'' section, and also appears on page 10464 of the February 24, 1995 notice in paragraph II.(c).

The purpose of this document is to correct the application due date by extending it until 3 p.m. on Monday, May 15, 1995, in both of the places referred to above.

DATES: Applications must be received by the appropriate field office of the HUD Office of Native American Programs (ONAP) no later than 3 p.m., May 15, 1995. Application materials will be available from each field office. General program questions may be directed to the field office serving your area or by contacting Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410. Telephone (202)

755–0068. The Telecommunications Device for the Deaf (TDD) number is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 95–4451, the Notice of Fund Availability for Fiscal Year 1995 for Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, published in the **Federal Register** on February 24, 1995 at 60 FR 10452, is corrected as follows:

1. On page 10452, in the first column, in the **DATES** section, in line 5, the date ''May 14, 1995'' is corrected to read ''May 15, 1995''.

2. On page 10464, in the first column, in paragraph II.(c), in the last line in the column, correct ''May 14, 1995'' to read ''May 15, 1995''.

Dated: March 6, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95–6052 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. N–95–3846; FR–3786–N–02]

Notice of Amendment to NOFA for Fiscal Year 1995 for Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of amendment to notice of funding availability (NOFA) for fiscal year (FY) 1995 for Indian Applicants for HOME Investment Partnerships Act (the HOME Act) programs, referred to as the HOME program.

SUMMARY: This notice amends the FY 1995 Indian HOME NOFA published on January 17, 1995 (60 FR 3520), to conform with the recent interim regulation which expanded the number of eligible applicants. It also makes corrections or clarifications to several statements in the text of the NOFA, including a modification to Appendix 1, List of Local Offices of Native American Programs.

DATES: The application due date remains the same. Applications must be RECEIVED by the Office of Native American Programs (ONAP) having jurisdiction over the applicant on or before 3 p.m. (ONAP local time) on April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Division of Housing and Community Development, Office of Native American Programs, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–0068 (this is not a toll-free number). Hearing- or speech-impaired persons may use the TDD number by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339)(a toll-free number).

SUPPLEMENTARY INFORMATION: On January 17, 1995 (60 FR 3520) the Department published the FY 1995 Indian HOME NOFA. This notice makes a number of corrections or clarifications to several statements in the text of the NOFA:

Eligible Applicants

Section I.(c)(1) on page 3521, pertaining to eligible applicants, is revised to reflect an amendment made to the HOME rule at 24 CFR Part 92. This amendment broadens the category of eligible applicants to include Tribal organizations.

Number of Copies of Application

This notice specifies that applicants must submit an original and two copies of the application. This requirement is added to the end of the paragraph headed ''Summary,'' on page 3520, and to the Checklist of Eligibility Requirements and Application Submission Requirements, on page 3521.

Typographical Error

On page 3522, the designation of the section on ''Economic Opportunities for Low and Very Low Income Persons'' is corrected from ''E'' to ''G''.

Building Codes

On page 3522, section I.(d)(2)(vii) in the second column requires the submission of ''A statement documenting the codes for the project''. This requirement ties in with the selection criterion, ''Project feasibility,'' in the first column on page 3524 at section I.(e)(1)(ii)(E) and item (5) in the last paragraph in the column, which both refer to building codes. The requirement and the references are being deleted because they are not in accord with the regulation (24 CFR 92.621) that is cited for building codes.

Benefits to Very Low-Income and Low-Income Members of the Tribe

A clarification is made regarding the formula in section (1)(i)(D) on page 3523 of the NOFA, ''Benefits to Very Low and Low-Income Members of the Tribe.'' The formula must use the total of all the families with unmet housing needs, rather than only the families with unmet needs in the particular category for which the application is made. An example is provided. Clarification of the effect of a mixed project on the formula is also provided. A mixed project may be mixed as to tenure (e.g., rental, home ownership), but it may not be mixed as to type (i.e., a combination of acquisition, rehabilitation, new construction). If the project is mixed, that fact is of no consequence in using the formula.

Staffing Plan During Implementation

On page 3526 of the NOFA, column 1, ''(iii) Staffing Plan during Implementation,'' the narrative reads, ''A proposal having highly experienced/competent personnel will receive 11–15 points.'' The scoring guide (Table 11) doesn't allow for a range of points. It assigns 15 points for Good, 7 for Fair, 0 for Unsatisfactory. This notice amends the text to delete the range and make clear that 15 points will be awarded if the criterion is met.

Points for Geographic Diversity

The NOFA on page 3520, column 2, and page 3521, column 1, in discussing the new geographic diversity provision refers to an application which scores over 50 points. However, on page 3527, column 2, in citing geographic diversity, the NOFA refers to an application that scores at least 50 points. To clarify that the Department means at least 50 point, i.e., 50 or above, a correction is made to the statements at the referenced locations.

This notice also includes a modification to Appendix 1.—List of Local Offices of Native American Programs, to add that Utah tribes apply to Northern Plains ONAP and Iowa tribes apply to Eastern/Woodlands ONAP.

Accordingly, the Department amends the FY 1995 Indian HOME NOFA published on January 17, 1995 (60 FR 3520) as set forth below:

1. A new sentence is added to the paragraph headed ''Summary,'' in the first column on page 3520 to read as follows:

* * * Applicants must submit an original and two copies of the application.

2. On page 3520, the fifth paragraph which appears in the second column is revised to read as follows:

This year there is a geographic diversity requirement in the NOFA which assures that for every ONAP Region with a fundable application which scores at least 50 points there will be one award which goes to the highest scoring application from that ONAP Region.

3. On page 3521, section I.(b)(2), which appears in the first column, is revised to read as follows:

(2) For FY 1995, there is a geographic diversity requirement which assures that for every ONAP Region with a fundable application which scores at least 50 points there will be one award which goes to the highest scoring application from that ONAP Region.

4. On page 3521, section I.(c)(1), which appears in the first column, is revised to read as follows:

(1) *Eligible Applicants.* (i) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(ii) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds under this NOFA on behalf of any Indian Tribe, band, group, nation, or Alaskan native village eligible under that Act when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(iii) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(iv) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (i) of this section, or as a Tribal organization, as provided in paragraph (ii) of this section, by the application submission date.

(v) Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively.

5. On page 3521 in the third column, section I.(d)(1)(vii) is added to read as follows:

(vii) _____ Submitted with an original and two copies.

6. On page 3522, in the first column, ''(E) Economic Opportunities for Low and Very Low Income Persons'' is corrected to read ''(G) Economic Opportunities for Low-Income and Very Low-Income Persons''.

7. On page 3522, in the second column, section I.(d)(2)(vii) is removed and reserved.

8. On page 3523, section I.(e)(1)(i)(D), which appears in the third column, is revised to read as follows:

(D) Benefits to Very Low-Income and Low-Income Members of the Tribe (5 points maximum). Under this factor, the applicant with the larger ratio of unmet low-income and very low-income need receives more points. The ratio consists of a numerator, which is the number of very low-income and low-income families of the tribe in need of housing divided by a denominator, which is the total number of very low-income and low-income families of the tribe. The result is multiplied by 5 to determine the number of points received under this criterion. The number of points should be rounded to 2 decimal places. See Table 4.

The total of all the low-income and very low-income families with unmet housing needs is the number that is considered for the numerator in the formula used in this criterion, regardless of the particular activity for which funding is sought in the application. For example, if the applicant is applying for funds to rehabilitate 10 units and there are 100 low-income and very low-income families in need of rehabilitated units but the total number of low-income and very low-income families with housing needs of all types (rental, new construction, and rehabilitation) is 500, the number that would be used in the formula as the numerator is 500. If the project is mixed, that fact is of no consequence in using the formula (A mixed project may be mixed as to tenure of the families to be assisted, i.e., rental or home ownership, but it may not be mixed as to type of project activity, i.e., a combination of acquisition, rehabilitation, new construction).

For example, a tribe has 20 low-income and very low-income families in need of housing and a total of 100 low-income and very low-income families. Substitute these values in the formula:

$5\times(20/100)=$
$5\times0.20=$
1.00 point.

9. On page 3524, in the first column, section I.(e)(1)(ii)(E) and item (5) in the last paragraph in the column are removed and reserved.

10. On page 3526, section I.(e)(2)(iii)(A), which appears in the first column, is revised to read as follows:

(A) Implementation Plan. The staffing plan must identify key personnel, and their experience relative to the proposed project, who will be employed during the implementation phase of the project, i.e., during acquisition, rehabilitation, construction. In order to be properly rated, experience identified must demonstrate the competence of key personnel in relation to the tasks required in implementing the proposed project. A proposal having highly experienced/competent personnel will receive 15 points. Proposed staff will be rated in varying degrees of competence in accordance with Table 11 below.

11. On page 3529, Appendix 1, List of Local Offices of Native American Programs, is amended by revising the first and third entries to read as follows:

APPENDIX 1.—LIST OF LOCAL OFFICES OF NATIVE AMERICAN PROGRAMS

Tribes located	ONAP address
East of the Mississippi River (including all of Minnesota and Iowa).	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TDD Numbers: 1–800–927–9275 or 312–886–3741.
* * * * * * *	
Colorado, Iowa, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TDD Number: 303–844–6158.
* * * * * * *	

Dated: March 6, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6053 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–33–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket Nos. N–95–3486; FR–3288–N–06 and N–95–3719; FR–3473–N–08]

Applicants for Preservation Technical Assistance Grants; Intermediaries To Administer Preservation Technical Assistance Grants

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On September 3, 1992, HUD published a Notice of Funding Availability (NOFA) (57 FR 40570) for Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. The September 3, 1992 NOFA (1992 NOFA) is now cancelled and new applicants must now apply for grants under a NOFA published on April 6, 1994 (59 FR 16366) (1994 NOFA) for Intermediaries to Administer Preservation Technical Assistance Grants. If the HUD Area/State Office has already received a Preservation Technical Assistance Grant (PTAG) application, under the 1992 NOFA, but has not yet funded it, the applicant may withdraw the application and resubmit a new application to the Intermediary without penalty or may proceed under the 1992 NOFA if funds are available. If a grantee under the 1992 NOFA is currently proceeding under the 1992 NOFA, they will continue to receive funds until all funds have been utilized or all grant activities are completed, or they can choose to close out the PTAG grant and apply under the 1994 NOFA. Any applications under the 1992 NOFA approved for Phase I funding after March 1, 1995, may inquire through the Resident Initiative Specialist (RIS) in the HUD Area/State Office, if there are funds available to proceed to the next phases or may apply to the Intermediary under the 1994 NOFA.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Mulholland, Acting Chief, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0614, Extension 2649. The TDD number for the hearing impaired is (202) 1–800–877–8339. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This Notice announces to applicants for Preservation Technical Assistance Grants (PTAGs) that the Department of Housing and Urban Development's Area/State Offices will no longer be accepting applications under the September 3, 1992 NOFA, Low Income Housing; Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils. Starting on March 6, 1995 eligible applicants may apply for Technical Assistance Grants through Intermediaries that were selected under the NOFA published in the **Federal Register** on April 6, 1994, NOFA for Intermediaries to Administer Preservation Technical Assistance Grants. The April 6, 1994 NOFA describes in Appendix A the eligibility requirements for Technical Assistance Applicants. Interested applicants may obtain application kits from the Intermediaries listed below.

SELECTED INTERMEDIARIES

Contact information	State(s)
Amador Toulumne Community Action Agency—Ms. Diane Bennett, Jackson, CA 94105, Phone: (209) 533–1397, Fax: (209) 533–1034.	Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, Utah, Wyoming.
Cedac Community Economic Development Association—Mr. Vince O'Donnell, 19 Temple Place, Suite 200, Boston, MA 02111, Phone: (617) 727–0506, Fax (617) 727–0705.	Massachusetts.
Community Action Council of Lexington, Inc.—Mr. Scott Brannon, 913 Georgtown Street, Lexington, KY 40511, Phone: (606) 244–2210, Fax: (603) 244–2219.	Kentucky
Community Services of West Alabama, Inc.—Ms. Diane Schussel, 601 17th Street, Tuscaloosa, AL 35401, Phone: (205) 752–5429, Fax: (205) 758–7229.	Alabama.
Connecticut Housing Investment Fund—Mr. Lou Trajeuski, 121 Tremont Street, Hartford, CT 06105, Phone: (203) 233–5165, Fax: (203) 233–3920.	Connecticut.
Department of Trade and Economic Development—Mr. Al D'Alessandro, 906 Columbia St., S.W., P.O. Box 48300, Olympia, WA 98504–83000, Phone: (206) 586–3370, Fax: (206) 586–5880.	Washington.
Lisc Kansas City Office—Mr. Jim White, 3822 Summit, Suite 200, Kansas City, KS 64111, Phone: (816) 753–0055, Fax: (816) 753–6397.	Kansas, Missouri (West).
Little Dixie Community Action Agency—Mr. Tom Martindale, 506 West Duke Street, Hugo, OK 74743, Phone: (405) 326–6441, Fax: (405) 326–6655.	Nebraska, North Dakota, Oklahoma, South Dakota.
Low Income Housing Fund—Mr. Cort Gross, 605 Market Street, Suite 200, San Francisco, CA 94105, Phone: (415) 777–9804, Fax: (415) 777–9195.	California, Delaware, Florida, Texas.
Minnesota Housing Partnership—Mr. Chip Halbach, 122 West Franklin Avenue, Suite 522, Minneapolis, MN 55404, Phone: (612) 874–0112, Fax: (612) 874–9685.	Minnesota.
National Center for Tenant Ownership G.T. Law—Mr. Ben Hecht, 777 N. Capital St., N.E., Suite 405, Washington, DC 20002–4239, Phone: (202) 371–9200, Fax: (202) 371–2404.	Arkansas, Caribbean, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland (North), Michigan, Mississippi, Missouri (East), Ohio, South Carolina, Tennessee, Virgin Islands, Virginia (South), West Virginia.
Neighborhood Preservation Coalition NYS., Inc.—Ms. Cecilia Tkaczyk, 303 Hamilton Street, Albany, NY 12210, Phone: (518) 432–6757, Fax: (518) 432–6758.	New York.
New Hampshire Housing Finance Authority—Ms. Amy Facey, 244 Constitution Drive, Bedford, NH 03110, Phone: (603) 472–8623, Fax: (603) 471–1043.	New Hampshire.

SELECTED INTERMEDIARIES—Continued

Contact information	State(s)
New Mexico Region II Authority—Ms. Teresa Baca, 220 Bernalillo Street, Las Vegas, NM 87701, Phone: (505) 454–0654, Fax: (505) 454–1603.	New Mexico.
North Carolina Housing Finance Agency—Ms. Mary Rica Todd, 1801 Lake Boone Trail, Raleigh, NC 27607, Phone: (919) 571–4808, Fax: (919) 781–5623.	North Carolina.
Oregon Housing and Community Development—Ms. Elizabeth Boylston, 1600 State Street, Salem, OR 97310, Phone: (503) 287–9750, Fax: (503) 287–9761.	Oregon.
Pennsylvania Housing Finance Agency—Ms. Lisa Yaffee, 2101 North Front Street, P.O. Box 8029, Harrisburg, PA 17105, Phone: (717) 780–3882, Fax: (717) 780–3905.	Pennsylvania.
Rhode Island Housing and Mortgage Finance Corp.—Ms. Christina Hannifan, 60 Eddy Street, Providence, RI 02903, Phone: (401) 457–1113, Fax: (401) 457–1140.	Rhode Island.
State of New Jersey—Dept. of Community Affairs—Mr. Meyer Pincelli, 101 S. Broad Street, CN 806, Trenton, NJ 08625–0806, Phone: (609) 633–6303, Fax: (609) 984–8454.	New Jersey.
Vermont Housing Finance Agency—Mr. Paul Cummings, One Burlington Square, Burlington, VT 05401, Phone: (802) 864–5743, Fax: (802) 864–5746.	Vermont.
Washcog—Ms. Peggy Sand, 777 North Capital Street, N.E., Suite 300, Washington, DC 20002–4239, Phone: (202) 962–3268, Fax: (202) 962–3204.	Maryland (South), Virginia (North), Washington, DC.
Wiscap—Mr. Robert Jones, 1310 Mendota Street, Suite 103, Madison, WI 53714, Phone: (608) 244–0466, Fax: (608) 244–4064.	Wisconsin, (Resc).
Wisconsin Housing & Economic Development—Ms. Carol Winge, 1 S. Pinckney Street, Suite 500, Madison, WI 53701, Phone: (608) 267–1453, Fax: (608) 267–1099.	Wisconsin (Pred).

Dated: March 6, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–6103 Filed 3–10–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Accohannock Indian Tribal Association, Inc., c/o Ann Buck MacKay, 427 Loblolly Lane, Salisbury, MD 21801–6851, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 18, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6140 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Ani-Stohini/Unami Nation, c/o Misty Dawn Thomas, Route #1, Box #335, Ivanhoe, Virginia 24350, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on July 8, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6139 Filed 3–8–95; 8:45 am]

BILLING CODE 4310–02–M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Occaneechi Band of Saponi Nation, c/o Lawrence Dunmore, 4006 Mary's Grove Church Road, Mebane, North Carolina 27302 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on January 6, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties and informed parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: February 23, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6141 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–02–M

National Park Service

General Management Plan; Grand Canyon National Park, Arizona; Notice of Availability; Draft Environmental Impact Statement

Summary: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) that describes and analyzes a proposed action and four alternatives for the general management plan for Grand Canyon National Park. The official responsible for a decision on the proposed action is the Regional Director, Western Region, National Park Service.

Comments: Comments on the DEIS should be received no later than April 24, 1995. Dates for public meetings regarding the DEIS will be from March 25 to 29, 1995 in various locations in Arizona and Utah. Written responses to the DEIS should be submitted to Planning Team Leader, Grand Canyon General Management Plan, National Park Service, Denver Service Center-TWE, P.O. Box 25287, Denver, CO 80225–0287.

Public Meetings: All of the public meetings are to be held evenings from 6:00–9:00 pm. The March 25 meeting will be at the Best Western Red Hills Hotel, 124 W. Center, Kanab, Utah. The March 27 meeting will be at the Grand Canyon School Multipurpose Room, Boulder St., Grand Canyon, Arizona. The March 28 meeting will be at the Woodlands Plaza Hotel, 1175 W. Route 66, Flagstaff, Arizona. The March 29 meeting will be at the Ramada Camelback Hotel, 502 W. Camelback Rd., Phoenix, Arizona.

Review Copies: Public reading copies of the DEIS will be available for review at three locations: [1] Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW, Washington, DC 20240 (202) 208–6843; [2] Western Regional Office, National Park Service, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372 (415) 415–744–3968; [3] Headquarters, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (602) 638–7701.

A limited number of copies of the DEIS are available on request from: Rob Arnberger, Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (602) 638–7701; or the Planning Team Leader, Grand Canyon General Management Plan, National Park Service, Denver Service Center-TWE, P.O. Box 25287, Denver, CO 80225–0287 (303) 969–2210.

Supplementary Information: This general management plan provides management objectives and visions for the entire park, with alternative plans for the park's developed areas (South Rim, North Rim, Tuweep, and corridor trails). The proposed action, the no-action alternative, and three other alternatives are presented in this document, and their environmental consequences are analyzed.

The proposed action (alternative 2) would emphasize regional cooperation for information distribution, regional resource preservation, and a quality visitor experience. A major shift away from the use of private automobiles would occur. Alternative modes of transportation would be emphasized throughout the region, with staging areas linked to regional private transit services in outlying communities and a public transit system within the park. Private vehicles would be removed from the heaviest use areas in the park, creating pedestrian-only areas. The number of private vehicles allowed into the park at any one time would be limited in certain areas. The adaptive use of historic structures and other structures would be maximized. The construction of new facilities within the park would be almost entirely within disturbed areas. The visitor experience would be defined by the unique qualities of each individual area, and the number of visitors allowed into some areas of the park would be determined by a carrying capacity analysis. With respect to environmental consequences, the proposed action would stabilize the growth of infrastructure within the park, enhance natural and cultural resource preservation, improve significantly the visitor experience, create better living and working conditions for park employees, and benefit local economies.

The other alternatives include: Continuing existing conditions (the no-action alternative), a minimum requirements alternative (alternative 1), reduced development within the park (alternative 3), and increased development within the park (alternative 4).

The responsible official for a decision on the proposed action is the Regional Director, Western Region, National Park Service.

Dated: February 28, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–6101 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States v. Mundet-Hermetite, Inc.*, Civil Action No. 95–0009–L, was lodged on February 24, 1995 with the United States District Court for the Western District of Virginia. The Consent Decree settles an action brought under Section 113 of the Clean Air Act (the ''Act''), 42 U.S.C. 7413, seeing an injunction and civil penalties for defendant's violation of the Prevention of Significant

Deterioration (PSD) requirements of 42 U.S.C 7470, *et. seq.*, and the regulations promulgated thereunder. Pursuant to the Consent Decree, defendant has agreed to pay a civil penalty of $90,000, to cease the plant process which was the source of the violation, and not to recommence that process except in compliance with the Clean Air Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Mundet-Hermetitite, Inc., DOJ Ref.* #90–5–2–1–1949.

The proposed consent decree may be examined at the office of the United States Attorney, 105 Franklin Rd. SW, Suite 1, Roanoke, VA 24011; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6048 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy notice is hereby given that on February 10, 1995, a proposed Partial Consent Decree in *United States* v. *Smuggler-Durant Mining Corporation, et al.,* Civil Action No. 89–C–1802, was lodged with the United States District Court for the District of Colorado. The Complaint in this case was brought under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. § 9601 *et seq.*, against several parties who are owners or operators of facilities at which hazardous substances are being released into the environment, or who owned or operated facilities at a time when hazardous substances were disposed of there. The United States' Complaint sought recovery of costs incurred and to be incurred by the United States in connection with the clean up of hazardous substances at the Smuggler Mountain Superfund Site (''Site'') in and adjacent to the City of Aspen, Colorado.

The proposed partial Consent Decree involves the MAXXAM, Inc. and Top of Aspen, Inc. (''MAXXAM''). This decree settles claims brought by the United States against MAXXAM under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and provides the MAXXAM a covenant not to sue for past and future response costs or response actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973 as well as a limited covenant for natural resource damages on Operable Unit 1 of the Site. In return, MAXXAM will reimburse the United States $1,700,000,00 for response costs incurred in connection with the Site. Finally, the decree resolves potential counterclaims by MAXXAM against the United States for any activities conducted on-site by any instrumentality of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Smuggler-Durant Mining Corporation, et al.,* DOJ Ref. No. 90–11–2–174.

The proposed Consent Decree may be examined at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, 202–624–0892. Copies of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of *$8.25* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–6049 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; Bardahl Manufacturing Corporation, et al.

Notice is hereby given that defendant Bardahl Manufacturing Corporation (''Bardahl'') has filed with the United States District Court for the Western District of Washington a motion to terminate the Final Judgment in *United States* v. *Bardahl Manufacturing Corporation, et al.,* Civil No. 83–71; and that the Department of Justice (''Department''), in a stipulation also filed with the Court, has consented to termination of the Final Judgment but has reserved the right for at least seventy (70) days after the publication of the notice to withdraw its consent. The complaint in this case (filed June 30, 1969) alleged that Bardahl and other companies affiliated with Bardahl had conspired to fix uniform prices and allocate exclusive geographical sales territories for the sale of motor oils, greases and lubricants manufactured by Bardahl and sold by Bardahl distributors in the United States.

The Final Judgment (entered August 11, 1969) enjoined the defendants from selling any finished Bardahl products to any person upon any conditions which restrict the persons to whom, the prices at which, or the territory within which such products may be sold.

The Department has filed with the court a memorandum setting forth the reasons why the Government believes that termination of the Final Judgment would serve the public interest. Copies of the Complaint and Final Judgment, Bardahl's motion papers, the stipulation containing the Governemnt's consent, the Government's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at Room 10–437, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20001, and at the Office of the Clerk of the United States District Court for the Western District of Washington, 1010 Fifth Avenue, Room 215, Seattle, Washington 98104. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received by the Division within sixty (60) days and will be filed with the court by the Government. Comments should be addressed to Christoper S.

Crook, Acting Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone: (415) 556–6300).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–6050 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

United States, State of Florida and State of Maryland, v. Browning Ferris Industries, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(c)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States, State of Florida and State of Maryland* v. *Browning Ferris Industries, Inc.,* Civil Action No. 94–2588, filed in the United States District Court for the District of Columbia, together with the United States' responses to those comments.

Copies of the comments and responses are available for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. and for inspection and copying at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C.

Constance K. Robinson,

Director of Operations.

Comments on the Proposed Final Judgment and the United States' Responses to the Comments

United States of America, State of Florida, by and through its Attorney General Robert A. Butterworth, and State of Maryland, by and through its Attorney General J. Joseph Curran, Jr., Plaintiffs vs. Browning-Ferris Industries, Inc., Defendant. Civil Action No.: 1:94CV02588.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), the United States hereby files the attached comments on the proposed Final Judgment in the above-captioned civil antitrust proceeding, together with the United States' responses to those comments.

This action was commenced on December 1, 1994, when the United States, the State of Maryland (''Maryland'') and the State of Florida (''Florida'') filed a Complaint that the acquisition by Browning-Ferris Industries, Inc. (''BFI'') of the ordinary voting shares of Attwoods plc (''Attwoods'') violated Section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commerce for small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland.

At the same time the United States, Maryland, and Florida filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and a Hold Separate Stipulation and Order. Shortly thereafter the United States filed a Competitive Impact Statement. The proposed Final Judgment requires BFI to divest certain Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. It also requires BFI to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area. The Hold Separate Stipulation and Order requires BFI to preserve, hold, and continue to operate the assets that may be divested under the Final Judgment as separate ongoing businesses. The Stipulation provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on December 15, 1994 and terminated on February 13, 1995. During this period, the United States received two comments on the proposed Final Judgment. The United States considered the comments and sent written responses to the commenting parties.[1]

Pursuant to 15 U.S.C. 16(e), the proposed Final Judgment can be entered only after the Court determines that the Judgment is in the public interest. The focus of this determination is whether the relief provided by the proposal Final Judgment is adequate to remedy the antitrust violation alleged in the Complaint.[2]

Both comments expressed concern about the contracts used by BFI with its small containerized hauling customers. One of the comments expressed concern that the contract currently in use by BFI in the greater Baltimore metropolitan area is one-sided. The other comment stated that the new contracts required to be used by BFI in Broward County, FL under the proposed Final Judgment were being used by BFI as marketing tools to the disadvantage of small haulers. That comment suggested that BFI should be required to cancel all its existing contracts immediately and implement the new contracts all at one time. The comment went on to suggest that the combination of BFI and Attwoods' municipal franchises would permit BFI to subsidize cheaper prices in the small containerized hauling service market to the detriment of other haulers.

The United States explained in its responses to these comments that, in the greater Baltimore area, the concern about BFI's use of restrictive customer contracts has been expressly rectified by the proposed Final Judgment. BFI is required to use less restrictive customer contracts that do not have the effects complained of in the comment. The Department also explained that, in Broward County, FL, BFI was being required to phase in the new contracts rapidly—within one year. The proposed Final Judgment requires that the new contracts be made available immediately to all new customers and all customers signing new contracts. A one year period to convert all other customers seemed reasonable in order to avoid unnecessary confusion and the probable higher cost of immediately converting all customers to the new contract. Finally, the Department explained that using franchised business, in which municipal entities solicit bids and award contracts to serve consumers within their boundaries, to subsidize the small containerized hauling market would likely occur only if bidding for franchises is not competitive. The Department was not persuaded, given the number of actual and potential bidders for municipal franchises in the Florida markets, that the acquisition raised any concerns in the market for bidding on municipal franchises.

After careful consideration of the comments, the United States continues to believe that, for the reasons stated in the responses to the comments and in the Competitive Impact Statement, the proposed Final Judgment would be adequate to remedy the risks to competition presented by the proposed acquisition and, therefore, the proposed Final Judgment is in the public interest.

After the comments and responses have been published in the Federal Register, pursuant to 15 U.S.C. 16(d) of the APPA, the United States will move this Court for entry of the proposed Final Judgment.

Dated: March 2, 1995.

Respectfully submitted,

Nancy H. McMillen,

Peter H. Goldberg,

Eva Almirantearena,

Attorneys, Antitrust Division, Department of Justice.

Eastern Trans-Waste of Maryland, Inc.

December 15, 1994.

Anthony V. Nanni,
Chief, Litigation I Section, Antitrust Division, U.S. Dept. of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530

Re: BFI's Settlement

Dear Mr. Nanni: As I am sure you are well aware the matter of EWI's takeover by BFI is of grave concern. I am an owner of a small women-owned refuse business and I am writing this letter to voice my awareness regarding various unethical procedures being practiced by big business. Small business concerns are being gobbled up by big business. This development should alert all interested in economic fairplay, because these unfair and illegal practices can lead to

[1] The Comments and Responses are attached as Exhibit A.

[2] United States v. Bechtel Corp., 1979–1 Trade Cases (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd,* 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied,* 454 U.S. 1083 (1982).

monopoly control and higher prices for the consumer.

Two such deceitful practices that I would like to bring to your attention are BFI's attempts to restrain trade with their one-sided contracts and their new attempt to gain control by backing a small-disadvantaged refuse company.

Specifically, Browning-Ferris regularly restrains trade by having their customers sign one-sided refuse service agreements. Once the customer gets into these deceptive agreements it seems impossible to get out.

Exhibit A

December 6, 1994.

Basically, the contract states that in order to terminate service you have to give them sixty day written notice (Certified Mail) before end of contract date. However, if you do not give this notice before the sixty day period the contract means the agreement is automatically renewed for three years. Being that most customers do not anticipate a formidable increase, the notification period usually passes unnoticed.

So, consequently BFI waits for the sixty days to pass and then proceeds to inform the customer the service price will increase. The increase is usually substantially higher than the original contract price and when the customer tries to seek a more competitive price BFI threatens to sue for the remainder of the contract. Although there is a contract, it is unfair and deceptive not allowing the customer any recourse action once the price increase is established. Under these circumstances the customer is able to void the contract due to deceitful terms, but the majority of the customers are ignorant to this fact. To illustrate this matter Fleet Maintenance, a small business located in Clinton, Maryland, was engaged in a contract with BFI and the price was considerably raised. Fleet proceeded to search for a more competitive price, so they contacted my company, Eastern Trans-Waste (ETW). ETW quoted a price that was fifty percent lower than BFI's price. Consequently, Fleet informed BFI that they would be cancelling service and if they didn't like it they would have to sue them. However, BFI didn't attempt to sue, instead they lowered the price of service, but only to drive out the competitor. In the majority of similar cases customers are intimidated by the contract and feel caught in a legal trap, which results lead to accepting the higher price. This depicts how trade is restrained by not allowing customers to shop for preferable prices, which seriously demeans our beliefs that we life in a fair and competitive society.

The other method that reflects the current situation would be BFI's attempt to gain control by backing a small-disadvantaged refuse business. Bethesda Naval Hospital recently put out to bid a recycling job which was offered only to small disadvantaged concerns. Due to this fact only one company submitted a bid. Consequently the contract was awarded to Heritage Recyclers; at an exorbitant price for the scope of the contract. Needless to say BFI has furnished all the equipment on this job with their name on said equipment and is performing the services.

As a result BFI has been gaining a larger market share by utilizing a variety of unfair and unethical tactics. All of the methods they employ undermine the long-term interests of small business in the refuse field. Therefore, you must see how this takeover of EWI is of crucial importance to the small business owner.

Although I have been concentrating on BFI and their unethical practices, I would like to point out that Waste Management also participates in these same methods that undermine the long-term interests of small business. Whereas, ETW is only one small business voicing this complaint there are others who have had business taken from them by big business and would be willing to reveal the scandalous procedures that were utilized.

Knowing that you are a busy person I would like to thank you for this opportunity to express my feelings on this matter and I look forward to a response.

Sincerely,

Kimberly A. Robb,

President, Eastern Trans-Waste of Maryland, Inc.

Department of Justice, Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
60–4953–0059

Kimberly A. Robb,
President, Eastern Trans-Waste of Maryland, Inc., 1402 Richie Marlboro Road, Capitol Heights, Maryland 20743

Re: United States V. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Ms. Robb: This letter responds to your letter dated December 15, 1994 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc (''Attwoods'') by Browning-Ferris Industries, Inc. (''BFI''). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

You expressed concern that BFI regularly restrains trade by having their customers sign one-sided refuse service agreements. You note that once the customer signs one of these agreements ''it seems impossible to get out.'' Letter at p. 1. You specifically mention a provision requiring the customer to give BFI written notice 60 days or more before the end of the contract and that if this date is missed, the agreement is automatically renewed for three years. You further state that, once the contract is renewed, BFI increases its price to the customer and threatens to sue the customer if the customer tries to seek a more competitive price.

The Department believes the proposed Final Judgment eliminates the concerns expressed in your letter. Specifically, Parts VIII A and B of the proposed Final Judgment require BFI to offer contracts to small containerized hauling customers in your area [1] that make it considerably easier for a customer to benefit from price competition for that customer's business. The initial term of the new contract is only one year (instead of the three year current term). The renewal term is only one year, instead of three. The customer can give notice much later under the new contract (up to 30 days from the end of the contract term rather than prior to 60 days from the end of the term), making it more likely the customer will have time to terminate the contract should it receive an attractive offer from a competitor. Furthermore, the liquidated damages provision of BFI's contract has been substantially decreased from six times the customer's average monthly charges. Under the proposed Final Judgment, customers may terminate the contract during their first 10 months as a BFI customer by paying only two times its prior average monthly charges and, after 10 months, an amount equal to one month's average charges. The Department believes these changes reduce a substantial barrier to entry into small containerized hauling service and will increase the likelihood that the customer will not ''feel caught in a legal trap'' (letter at p. 2).

Your letter expresses a second concern. You appear to describe a situation in which a small business set-aside bid was performed by BFI, rather than the small business that was awarded the bid. The acquisition that is the subject matter of this complaint and proposed Final Judgment has no effect on the alleged conduct you describe. This is not the type of matter that is subject to being remedied as part of a proposed acquisition and does not appear to be a matter within the jurisdiction of the Antitrust Division. The Department does appreciate your interest in enforcing the antitrust laws and any information relevant to that enforcement in the appropriate forum is welcome.

We appreciate you bringing your concerns to our attention, and hope that this information will help to alleviate them. Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

[1] The area in Maryland affected by this portion of the proposed Final Judgment is Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Coastal Carting Limited, Inc.

Garbage and Trash Removal, 2316 S.W. 56th Terrace, West Hollywood, Florida 33021

February 8, 1995.

Anthony V. Nanni,

Chief, Litigation One Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530

Re: Browning-Ferris Industries, Acquisition of Attwoods PLC, Civil action No.: 94–2588, United States of America, State of Florida, and State of Maryland vs. Browning-Ferris Industries, Inc., United States District Court for the District of Columbia

To Whom It May Concern: I am writing because I am very concerned about the acquisition of Attwoods by Browning-Ferris Industries and its effect upon my business.

Finally, BFI has utilized the Contract that as attached Exhibit ''B'' of the proposed Final Judgment as a marketing tool to discredit the smaller haulers. BFI is out in the market place telling the customer if he is not happy with the service provided by BFI, they can terminate the contract with minimum cost to the customer.

My suggestion is to terminate all the existing agreements immediately and then have BFI compete with us with them using the new Contract.

Finally, BFI will be able to subsidize their competitive commercial work by the monies made on the ''combined'' franchises of BFI and Attwoods allowing BFI to subsidize competitive prices, thereby, keeping the small hauler from competing in the market place where they can compete.

Once again, I am concerned about the effect this transaction will have on the market place and my business. Please feel free to contact me at your earliest convenience regarding these issues and I hope you will strongly consider my concerns.

Very truly yours,

Frank D'Agostino,

President, Coastal Carting Ltd., Inc.

Department of Justice Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
60–4953–0059

Frank D'Agostino,
President,
Coastal Carting Limited, Inc.,
2316 SW. 56th Terrace,
West Hollywood, Florida 33021

Re: United States v. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Mr. D'Agostino: This letter responds to your letter dated February 8, 1995 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Attwoods plc (''Attwoods'') by Browning-Ferris Industries, Inc. (''BFI''). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

Your letter expresses concern that BFI is using the less restrictive contracts the proposed Final Judgment requires it to use in Broward County, FL as a marketing tool to discredit the smaller haulers. You suggest that BFI should be required immediately to terminate all of its existing, more restrictive contracts, and compete using only the new contract. The Department considered requiring BFI to terminate all existing contracts immediately and to switch all of its customers to the new contract at once. The Department believed that this would result in much confusion and potentially high cost. Part VIII D of the proposed Final Judgment requires BFI to offer the new contract to all new customers and all customers that sign contracts effective beginning on the date BFI acquires a majority of the Attwoods' ordinary shares. That paragraph also requires that BFI offer the new contract to all other customers by December 1, 1995. As a result, BFI is required to offer the new contract to all of its Broward County customers within one year of the filing of the Complaint and proposed Final Judgment. The Department believes that this rapid phase-in of the contracts will enhance competition by getting the contracts into use quickly, but without the confusion and cost of an immediate switch of all customers to the new contract.

You also state that you are concerned that BFI will be able to subsidize their competitive commercial work through monies obtained from franchises previously controlled by Attwoods. The Department understands you to be referring to franchises for residential (and sometimes residential and commercial) solid waste hauling periodically put up for bid by municipal authorities.

Your concern appears to be that combining Attwoods' franchises with those already controlled by BFI will enable BFI to offer lower prices to its commercial small containerized hauling customers, undercutting your ability to compete with BFI in the commercial small containerized hauling market. This assumes that BFI will be able to obtain supracompetitive profits from the franchises to undercut other firms in the commercial small containerized hauling market. This subsidization could only happen if the bidding for franchises is not competitive. The Department is not aware of any evidence that the market for bidding on franchises in your area is not competitive.

While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the Complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Anthony V. Nanni,

Chief, Litigation I Section.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, a copy of the foregoing Comments on the Proposed Final Judgment and the United States' Responses to the Comments upon the following persons, counsel for defendant in the matter of *United States of America* v. *Browning-Ferris Industries, Inc.*:

Rufus Wallingford, Esquire, Executive Vice President and General Counsel, 757 North Eldridge Street, Houston, Texas 77079, (713) 870–7670

Martha J. Talley, DC Bar No. 246330, Dewey Ballantine, 1775 Pennsylvania Ave. NW., Washington, DC 20006, (202) 862–1014

Dated: March 2, 1995.

Nancy H. McMillen,

Attorney, Litigation I Section, Antitrust Division, Department of Justice.

[FR Doc. 95–6045 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Robert E. Sylvester, D.O.; Denial of Application

On June 23, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert E. Sylvester, D.O., (Respondent) of Fairfax, South Carolina, proposing to deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest based on Respondent's lack of authorization to handle controlled substances in the State of South Carolina; that Respondent issued various controlled substances prescriptions for himself and others and such prescriptions were not in the usual course of his professional practice and not for a legitimate medical reason; that he had previously surrendered a DEA Certificate of Registration for cause; that he materially falsified an application for

a DEA Certificate of Registration; that he had previously been convicted of a felony relating to controlled substances; and that he submitted false medicaid claims.

The Order to Show Cause was served on Respondent by registered mail. On July 14, 1994, Respondent, through counsel, submitted a written statement waiving a hearing, admitting all allegations except those pertaining to the false medicaid claims and the material falsification of his DEA application. The Deputy Administrator has considered this statement along with the investigative file. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Respondent. 21 CFR 1301.57.

The Deputy Administrator finds that effective September 18, 1991, Respondent's medical license was revoked, pursuant to an Administrative Consent Agreement, by the State of South Carolina, Department of Health and Environmental Services (DHES). As a result of the DHES's action, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of South Carolina.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the State in which he/she practices. *See* 21 U.S.C. 832(f). The Deputy Administrator and his predecessors have consistently so held. *See Howard J. Reuben, M.D.,* 52 FR 8375 (1987); *Ramon Pla, M.D.,* Docket No. 86–54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.,* Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Respondent lacks State authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the other issues alleged in the Order to Show Cause.

Respondent does not contest that he is not currently authorized to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration, submitted by Robert E. Sylvester, D.O., be, and it is hereby denied. This order is effective March 13, 1995.

Dated: March 7, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–6115 Filed 3–10–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–20; Exemption Application No. D–09690, et al.]

Grant of Individual Exemptions; Iron Workers Pension Trust of Colorado, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Iron Workers Pension Trust of Colorado (The Pension Plan); and Colorado Iron Workers (Erection) Statewide Joint Apprenticeship and Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 95–20; Exemption Application Nos. D–09690 and L–09691]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the loan (the Loan) of $141,601.36 by the Pension Plan to the Apprenticeship Plan, under the terms described in the notice of proposed exemption, provided the following conditions are satisfied: (a) The Loan represents less than 25% of the assets of the Pension Plan; (b) the terms of the Loan are not less favorable to either Plan than those obtainable in arm's-length transactions with unrelated parties; (c) the trustees of each Plan approved the Loan as being appropriate for, and in the best interest of each Plan; (d) no trustee of either Plan made such determination on behalf of the other Plan; and (e) the property securing the Loan has been appraised by a qualified, independent appraiser as having a fair market value in excess of 150% of the principal amount of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 4, 1995 at 60 FR 488.

EFFECTIVE DATE: This exemption is effective August 11, 1992.

WRITTEN COMMENTS: The Department received two written comments with respect to the proposed exemption. One comment sought further information

about the proposed exemption, which the Department provided to the commentator by telephone. The other comment did not address any issues relevant to the proposed exemption. After consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Wadco, Inc. Profit Sharing Plan and Trust (the Plan) Located in Spring, Texas

[Prohibited Transaction Exemption 95–21; Application No. D–09820]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain shares of stock (the Stock) by the Plan to Peter Aswad, a disqualified person with respect to the Plan.[1]

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Plan receives a sales price equal to the fair market value of the Stock as determined by an independent, qualified appraiser; (5) the trustees of the Plan determine that the Sale is appropriate for the Plan and is in the best interests of the Plan and their participants and beneficiaries; and (6) within ninety days of the grant of this exemption, Wadco files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 18, 1995 at 60 FR 3661.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

[1] Since Peter Aswad and his wife, Judith Aswad, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Treasure Valley Transplants, Inc. Money Purchase Pension Plan (the Plan) Located in Boise, Idaho

[Prohibited Transaction Exemption 95–22; Application No. D–09874]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to Dr. George Holzer, D.V.M. (Dr. Holzer), a disqualified person with respect to the Plan;[2] provided that the following conditions are satisfied:

(1) The Sale is a one-time transaction for cash;

(2) The Plan does not incur any expenses in connection with the proposed transaction; and

(3) The consideration paid for the Property is no less than the fair market value of the Property as determined by an independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5728.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Terry Segal, P.C. Retirement Plans Located in Boston, MA

[Prohibited Transaction Exemption 95–23; Exemption Application No. D–09891]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed purchase by Terry and Harriet Segal of an interest (the Interest) in a limited partnership from Mr. Segal's individually-directed account (the Account) in the Terry Segal, P.C. Pension Plan (the Pension Plan), provided: (1) The purchase is a one-time transaction for cash; (2) the Pension Plan Account is not required to pay any fees or commissions in connection therewith; (3) the Interest is appraised by a qualified, independent appraiser; and (4) the Pension Plan Account receives an amount which reflects the fair market value of the Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 30, 1995 at 60 FR 5729.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[2] Since Dr. Holzer is the sole shareholder of the Employer, and the only participant in the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3–3(c)(1). There is, however, jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 8th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–6117 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–18; Application No. D–09893]

Transaction Between Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. and VF Corporation, the Sponsoring Employer

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 60 FR published at page 10879 on Tuesday, February 28, 1995, make the following correction: On page 10879, in the first column under the section designated ''Exemption'' on the sixth line insert the word ''not'' between the words ''shall apply'', so as to read ''shall not apply'' (Emphasis added).

Signed at Washington, D.C., this 8th day of March 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–6119 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–09595, et al.]

Proposed Exemptions; Norwest Bank Minnesota, N.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Norwest Bank Minnesota, N.A. Located in Minneapolis, MN

[Application No. D–09595]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Exemption for the In-Kind Transfer of Assets

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of September 30, 1994, to the in-kind transfer of assets of plans for which Norwest Bank Minnesota, N.A. or any of its affiliates (collectively, the Bank) serves as a fiduciary (the Client Plans), including plans established or maintained by the Bank (the Bank Plans; collectively, the Plans), that are held in certain collective investment funds (the CIFs) maintained by the Bank, in exchange for shares of the Norwest Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which the Bank acts as investment adviser, custodian, and shareholder servicing agent, in connection with the termination of such CIFs provided that the following conditions are met:

(a) No sales commissions or other fees are paid by a Bank Plan or a Client Plan in connection with the purchase of shares of the Funds through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares of the Funds.

(b) All of the assets of a Bank Plan or a Client Plan that are held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(c) Each Bank Plan and each Client Plan receives shares of the Funds which have a total net asset value that is equal to the value of such Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the Investment Company Act of 1940 (the '40 Act), as

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure, which includes but is not limited to, the following information concerning the Funds:

(1) A current prospectus for each portfolio of the Funds in which a Bank Plan or a Client Plan is considering investing;

(2) A statement describing (i) the fees for investment advisory or similar services that are to be credited back to a Client Plan, (ii) the fees retained by the Bank for Secondary Services, as defined in paragraph (g) of Section III below, and (iii) all other fees to be charged to or paid by the Bank Plan or the Client Plan and by such Funds to the Bank or to unrelated third parties. Such statement also includes the nature and extent of any differential between the rates of the fees;

(3) The reasons why the Bank considers such investment to be appropriate for the Bank Plan or the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Bank Plan or a Client Plan may be invested in the relevant Funds, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted.

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Bank Plan's or the Client Plan's CIF assets to a Fund in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, the fees received by the Bank in connection with its services to the Funds and, in the case of a Client Plan only, the purchase by such Client Plan of additional shares of the corresponding Funds with the fees credited back to the Client Plan by the Bank. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act;

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities.

(g) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information:

(1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units;

(2) The number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (o) and (p) of Section II below as they would relate to all Plans are satisfied.

Section II. Exemption for the Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply, as of November 11, 1994, to (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds; and (2) the receipt and proposed retention of fees by the Bank from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as for any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment in shares of the Funds by the Client Plans, other than the Bank Plans, for which the Bank serves as fiduciary.

The aforementioned transactions are subject to the following conditions:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in paragraph (d) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director, purchases from or sells to any of the Client Plans shares of any of the Funds.

(d) The combined total of all fees received by the Bank for the provision of services to the Client Plans, and in connection with the provision of services to any of the Funds in which the Client Plans invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 of the '40 Act (the 12b–1 Fees) in connection with the transactions involving the Funds.

(f) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to third party sub-advisers, within not more than one business day after the receipt of such fees by the Bank.

(g) The Second Fiduciary receives, in advance of investment by a Client Plan in the Funds, full and detailed written disclosure of information concerning the relevant Funds as set forth above in Section I(d).

(h) On the basis of the information described in paragraph (d) of Section I, the Second Fiduciary authorizes in writing:

(1) The ongoing investment of assets of the Client Plans in shares of the Funds, in connection with the transactions set forth in Section II;

(2) The investment portfolios of the Funds in which the assets of the Client Plans may be invested; and

(3) The fees to be paid by the Funds in which Client Plans invest to the Bank

and the purchase of additional shares of the Funds by the Client Plan with the fees credited to the Client Plan by the Bank.

(i) The authorization referred to in paragraph (h) is terminable at will by the Client Plan, without penalty to the Client Plan. Such termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (h) of Section III below, or any other written notice of termination; provided that, if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

(j) In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary in accordance with paragraph (h) of this Section II, the Bank provides written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the contractual rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited to the Client Plans as required by paragraph (f) of Section II.

(k) In the event of an additional Secondary Service, as defined in paragraph (g) of Section III below, provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service, as defined in paragraph (g) of Section III below, that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increased, provide written notice to the Second Fiduciary explaining the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees of the affected Fund. Such notice will be accompanied by the Termination Form, as defined in paragraph (h) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k) and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by the Bank selling the shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale of shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the form on behalf of the Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of the Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, at least once in each calendar year, beginning with the calendar year that begins after the date of the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraph (k) of this Section II, except to the extent required by said paragraph (k) of this Section II to disclose an increase in fees.

(n) On an annual basis, the Bank will provide the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and upon such fiduciary's request, a copy of the Statement of Additional Information which contains a description of all fees paid by the Funds to the Bank.

(2) A copy of the annual financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes audit findings of an independent auditor (the Auditor) within 60 days of the preparation of the report.

In addition, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they arise.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(p) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (q) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and

(2) No party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) of Section II below; and

(q)(1) Except as provided in paragraph (p)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the Funds owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (q)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means Norwest Bank Minnesota, N.A. and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries,

controlling, controlled by, or under common control with the Bank. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term ''Fund'' or ''Funds'' refers to the Norwest Funds or to any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other ''Secondary Service'' (as defined below in paragraph (g) of this Section IV) which as been approved by such Funds.

(d) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(e) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(f) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, affiliate, employee, or relative of such Second Fiduciary is an officer, director, partner or employee of the Bank or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption; provided, however that with respect to Bank Plans, the Second Fiduciary may receive compensation from the Bank in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in such transactions.

With the exception of the Bank Plans, if an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change of fees charged to or paid by the Client Plan, any of the transactions described in Sections I and II above, then paragraph (f)(2) of this Section IV, shall not apply.

(g) The term ''Secondary Service'' means a service, other than investment advisory or similar services which is provided by the Bank to the Funds, including, but not limited to, custodial or shareholder services. However, the term ''Secondary Service'' does not include any brokerage services provided by the Bank to the Funds.

(h) The term ''Termination Form'' means the form supplied to the Second Fiduciary at the times specified in paragraphs (i), (k), (l), and (m) of Section II which expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (h) of Section II. Such Termination Form is to be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plan and to notify the Bank in writing to effect such termination by selling the shares of the Fund held by the Plan requesting termination not later than one business day following receipt by the Bank of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 30, 1994 with respect to the transactions described in Section I and as of November 11, 1994 with respect to the transactions described in Section II.

Summary of Facts and Representations

1. The parties or entities involved in the subject transactions are described as follows:

a. *The Bank* and its affiliates are direct or indirect wholly owned subsidiaries of Norwest Corporation, a bank holding company. The Bank is a national bank that is principally located in Minneapolis, Minnesota. It serves as trustee, directed trustee, investment manager or custodian to approximately 7,500 employee benefit plans. As custodian or directed trustee of a plan, the Bank has custody of a Client Plan's assets but it has no duty to review investments or make investment recommendations with respect to such assets. Instead, it must act only as directed by an authorized third party. When the Bank serves as a discretionary trustee or investment manager of a Client Plan, it generally invests, with the sponsor's approval, the assets of a Client Plan account in a series of CIFs it manages. The Bank may also provide investment advice to other fiduciaries who have investment discretion over a Client Plan's assets or manage an individual investment portfolio for a Client Plan.

As of December 31, 1992, the Bank had discretionary and nondiscretionary pension and welfare plan assets under management totaling $16.25 billion. Of this total, $3.2 billion of pension and welfare plan assets were held in 30 CIFs maintained by the Bank. Also as of December 31, 1992, the Bank had total discretionary assets under management for all trust clients, CIFs and investment advisory clients of approximately $22.35 billion and total trust assets (both discretionary and nondiscretionary) of approximately $90.75 billion.

With respect to the CIFs discussed herein, the Bank receives a single, Plan-level management fee negotiated with each Client Plan. The typical annualized fee range for the management fee is from .25 percent to 1.50 percent of invested Client Plan assets. The management fee is dependent upon such factors as asset class and negotiation. The Bank charges a minimum fee of $500 to $1,000 for small accounts but it charges no fee for Secondary Services (e.g., shareholder and custodial services) provided to a Client Plan.

b. *The Funds* individually constitute a separate investment portfolio or a series of portfolios having a separate prospectus and representing a distinct investment vehicle. In the aggregate, the Funds comprise a Delaware business trust currently registered as an open-end investment company under the '40 Act. The Funds include seventeen new portfolios ranging from money market funds to bond funds. In some situations, the shares of a Fund will be divided into different classes and charge different levels of expenses. Except for these differences, the shares of each Fund will

represent the same proportionate interest in the assets of that Fund.

c. *The Board of Trustees (the Trustees)* manages the Funds, negotiates the investment advisory contracts and contracts for Secondary Services described below. A majority of the Trustees are independent of the Bank. The Trustees are elected by the shareholders of the Funds, except that in certain cases following a vacancy on the Board of Trustees, the Trustees can appoint a new Trustee without advance shareholder approval.

The Bank serves as the investment adviser to each Fund and receives investment advisory fees from the Funds. The Bank also serves as custodian, shareholder servicing agent and transfer agent to the Funds and is compensated by the Funds for the Secondary Services it renders to such Funds in these capacities.

d. *Forum Financial Services (FFS)*, a Delaware corporation which is wholly independent of the Bank, serves as distributor of the shares of the Funds and provides administrative and accounting services to the Funds. FFS is compensated and reimbursed by the Funds for certain expenses it incurs in performing these functions.

e. *The Bank Plans* consist of the Norwest Corporation Master Savings Trust (the Savings Trust) and the Norwest Corporation Master Pension Trust (the Pension Trust). As of June 30, 1994, the Savings Trust had total assets of $747,976,484 and two participating Bank Plans, the Norwest Corporation Savings-Investment Plan (the Norwest Savings Plan) and the Ford Bank Group, Inc. Savings Plan (the Ford Savings Plan). Also, as of June 30, 1994, the Norwest Savings Plan and the Ford Savings Plan had 32,259 participants and 616 participants, respectively.

The Pension Trust holds the assets of the Norwest Corporation Pension Plan (the Norwest Plan), the First Minnesota Employee's Pension Plan (the First Minnesota Plan) and the United Bank of Colorado, Inc. Retirement Income Plan (the United Bank Plan). As of June 30, 1994, the Pension Trust had total assets of $625,781,748. As of January 1, 1994, the Norwest Pension Plan had 27,725 participants, the First Minnesota Plan had 868 participants and the United Bank Plan had 3,437 participants.

f. *The Client Plans* include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, Keogh Plans and IRAs for which the Bank presently serves (or will serve in the future) as a fiduciary (including those plans whose assets are currently invested in the Bank's CIFs).

g. *Wilmington Trust Company (WTC)* of Wilmington, Delaware, has been retained by the Bank to serve as the Second Fiduciary for the Bank Plans proposing to invest in the Funds. WTC, the primary subsidiary of Wilmington Trust Corporation, was established in 1903. WTC is wholly independent of the Bank and its affiliates.

As of December 31, 1993, WTC exercised discretionary investment authority over approximately $25.7 billion of fiduciary assets, including approximately $14.5 billion of assets of plans covered by the Act and non-qualified employee benefit plans. As of December 31, 1993, WTC also served as directed trustee, agent or custodian with respect to more than $2.5 billion of assets of plans covered by the Act and non-qualified employee benefit plans.

Description of the Transactions

2. The Bank maintains CIFs in which both Bank Plans and Client Plans have invested. To better serve the interests of these Plans, the Bank has decided, subject to approval of such Plans, to terminate twelve of its CIFs and transfer the assets currently invested in the CIFs to the corresponding Funds. The Bank notes that mutual funds are subject to supervision by the SEC, place greater emphasis on participant disclosure than do bank CIFs and provide an effective mechanism for disclosure. Moreover, the Bank represents that Plan sponsors and participants will be able to monitor more easily the performance of their investments in the Funds on a daily basis since information concerning investment performance of the Funds will be available in daily newspapers of general circulation.

Accordingly, the Bank requests retroactive exemptive relief with respect to the transfer of a Bank Plan's or a Client Plan's assets from certain terminating CIFs to the Funds. In addition, the Bank requests prospective exemptive relief for the receipt of fees from the Funds in connection with the investment of assets of Client Plans for which the Bank acts as a trustee, directed trustee, investment manager, or custodian, in shares of the Funds in instances where the Bank is an investment adviser, custodian, and shareholder servicing agent for the Funds.[2] The exemptive relief provided for the receipt of fees would cover Client Plans only, specifically those Plans for which the Bank exercises investment discretion as well as Client Plans where investment decisions are participant-directed by a Second Fiduciary.

In-Kind Transfers to the Funds by Bank Plans and Client Plans

3. During the weekends of September 30, 1994–October 2, 1994 and November 11–13, 1994, the Bank began transferring the assets of 12 terminated CIFs to the Funds. Specifically, during the weekend beginning September 30, 1994, the Bank transferred the assets of two CIFs, namely, ''Stock Fund S'' and ''Bond Fund R'' to the ''Contrarian Stock Fund'' and the ''Total Return Bond Fund.'' Then, during the weekend of November 11–13, 1994, the Bank terminated the assets of the ten remaining CIFs. Once terminated, the assets from these CIFs were transferred to fifteen ''Advantage Funds'' portfolios which also comprise the Funds. Following the transfers, the Bank commenced offering shares in the Funds to the Bank Plans and the Client Plans.[3]

To the extent legally permissible, all transfers were effected in-kind. However, because certain CIFs had already invested in other mutual funds and transfers of those mutual fund investments to the Funds would violate federal securities laws applicable to the

[2] The Bank is not requesting an exemption for investments in the Funds by the Bank Plans. The Bank represents that Bank Plans may acquire or sell shares of the Funds pursuant to Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department expresses no opinion on whether any transactions with the Funds by the Bank Plans would be covered by PTE 77–3.

[3] At present, the Bank does not intend to terminate or convert two other CIFs, the ''Short Term Investment Fund'' and the ''Stable Return Fund.'' Nevertheless, if at some future date the Bank were to decide to terminate and convert these two CIFs as well, the Bank represents that it will comply with the conditions of the final exemption and it will value the assets of both the CIFs and the transferee Funds in accordance with Rule 17a–7 of the '40 Act, as amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. (See Representation 3.)

Although the Bank does not currently anticipate that either of these CIFs will invest in the Funds, if such an investment were to be made, the fee arrangements will be structured to comply with Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977). In pertinent part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser of the investment company.

The Bank also represents that it will continue to comply with PTE 77–4 in connection with the crediting of fees paid to it or its affiliates by the Total Return Bond Fund and the Contrarian Stock Fund.

mutual funds, the Bank decided to liquidate those investments on the date of the transfer. The Funds then purchased substantially the same securities held by the mutual funds in whose shares the CIFs had previously been invested.

The Bank represents that the transfers of assets were conducted in accordance with Rule 17a–7 of the '40 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets so as to make the transactions ministerial and as nondiscretionary in nature as possible.[4] In this regard, the asset transfers to the funds occurred over one or more weekends selected by the Trustees using market values as of the close of business on the preceding Friday. Thus, the transfers of the securities were completed on Friday prior to the opening of business on Monday, the next business day. As of that day, a Bank Plan or a Client Plan whose assets were transferred from a CIF would hold shares in the corresponding Fund. The value of the Plan's assets in the Fund would be at the same aggregate value as the units held in the CIF as of the close of trading on the preceding Friday. The value of a CIF's portfolio was determined by FFS in coordination with the Bank. In this regard, it is represented that the current market price for specific types of CIF securities involved in the in-kind transfers was determined as follows:

a. If the security was a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or if there were no reported transactions in the Consolidated System that day, the average of the highest independent bid and the lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business; or

b. If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange; or if there were no reported transactions on such exchange that day, the average of the highest independent bid and lowest independent offer on such exchange as of the close of business; or

c. If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business; or

d. For all other securities (i.e., securities not listed on an exchange and for which no bid and ask quotations are readily available), valuation determined by (1) averaging prices obtained from at least three independent matrix pricing services[5] or (2) averaging bid and ask quotations as of the close of trading on the Friday preceding the in-kind transfers from three independent brokers.

In essence, the Bank represents that the transfer transactions were ministerial, performed in accordance with procedures prescribed by Rule 17a–7 and previously approved by the disinterested members of the Fund's Board of Trustees. The Bank also represents that the pricing of the securities was accomplished by reference to independent sources such that the transaction would result in an affected Bank Plan or Client Plan holding mutual fund shares of equal aggregate value to the previously-held CIF units. No sales commissions or redemption fees were or would be paid by a Bank Plan or a Client Plan in connection with investments of shares in the Funds. In addition, no fees for distribution expenses pursuant to Rule 12b–1 under the '40 Act were or would be paid to FFS or the Bank by a Bank Plan or a Client Plan with respect to transactions involving the Funds. Any fees charged by the independent brokers for bid and ask prices were the responsibility of the Bank. Further, the Bank represents that neither it nor its affiliates, including any officer or director of the Bank, had purchased or would purchase from or sell to any Bank Plan or Client Plan shares of any of the Funds.[6]

4. As stated above, prior to investing a Plan's assets in the Funds, the Bank was required to obtain the affirmative written approval of an independent Second Fiduciary who is typically, in the case of a Client Plan, the named fiduciary, trustee or sponsoring employer. In the case of a Bank Plan, the Bank retained the services of WTC to approve the in-kind transfer of assets of such Plan to the Funds.

The Bank provided advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds to the Second Fiduciary of a Bank or Client Plan. In this regard, the Bank provided the Second Fiduciary with a current prospectus for each portfolio of the Funds in which a Bank or Client Plan is investing. The disclosure statement described the fees for investment advisory or similar services to be credited back to the Client Plan, including any fees for Secondary Services and all other fees to be charged to or paid by a Bank Plan, a Client Plan or by the Funds to the Bank. Such disclosure included the nature and extent of any differential between the rates of fees. The disclosure statement also explained why the Bank believed that the investment in the Funds by a Bank Plan or a Client Plan was appropriate. As applicable, the disclosure statement further described any limitations on the Bank regarding which Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[7] Upon request of the Second Fiduciary, the Bank is required to provide a copy of the proposed exemption and/or a copy of the final exemption, if granted.

On the basis of information noted above, the Second Fiduciary could authorize, in writing, that the Bank transfer a Bank Plan's or a Client Plan's CIF assets to a Fund in exchange for shares of the Funds and invest the Plan's assets in corresponding portfolios of the Funds. For Client Plans, the written authorization also allowed the Bank to receive fees from the Funds and to purchase additional shares of the Funds with the fees credited back to the Client Plan by the Bank.

5. The Bank anticipated that the transfer of assets from the CIFs to the Funds would be accomplished in stages as sufficient numbers of approvals were received from Second Fiduciaries.[8] If

[4] In pertinent part, Rule 17a–7 mandates that such transactions be effected at the ''independent current market price'' for such security, involve no brokerage commissions or other remuneration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

[5] According to the applicant, the SEC has permitted securities not listed on an exchange and for which no bid and ask quotations are readily available to be valued by a matrix pricing methodology. The applicant explains that matrix pricing methodology is intended to approximate what the actual market values of securities would be if an active secondary market for those securities exists and takes into account a variety of factors such as the most recent market activity with respect to a subject security, liquidity, yield, rating, type of industry, coupon rate, maturity and economic conditions. If a matrix pricing service is used, the applicant explains that the pricing entity will not be affiliated with the Bank or the Funds.

[6] The Department notes that this representation is not intended to limit the ability of Client Plans to deal with the Bank's account representatives on matters involving the funds and is not meant to prohibit purchases or sales of shares of the Funds that are placed through personnel of the Bank when such personnel are acting as agents for the Client Plans.

[7] Section II(d) of PTE 77–4 requires, among other things, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

[8] According to the applicant, the conversion of the CIFs into the Funds could be accomplished in stages for reasons of efficiency and economy. Given

the Second Fiduciary had not provided the Bank with approval of investment in the Funds by the time the last transfer of assets from a terminating CIF to a Fund was to occur, a pro rata portion of the assets of the terminating CIF was distributed in cash to the trust account of a Bank Plan or a Client Plan before the final liquidation of the CIF took place.

6. Following each in-kind transfer, the Bank provided each affected Plan with a written confirmation statement. This statement set forth the number of CIF units held by the Plan immediately before the conversion, the related per unit value and the total dollar amount of the CIF units. The confirmation statement also included the number of shares in the Funds that were held by the Bank Plan or the Client Plan following the conversion, the related per share net asset value and the total dollar amount of the shares. The confirmation statement further disclosed (a) the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4); (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities.

For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information: (a) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act; (b) the price of each such security involved in the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities. In addition, for all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information: (a) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (b) the number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

Representations of the Second Fiduciary for the Bank Plans Regarding the In-Kind Transfers

7. As stated above, the Bank retained WTC as the Second Fiduciary to oversee the in-kind transfers of CIF assets to the Funds as such transactions affect the Bank Plans. In such capacity, WTC represented that it understood and would accept the duties, responsibilities and liabilities in acting as a fiduciary for the Bank Plans, including those imposed on fiduciaries under the Act.

WTC stated that it considered the effect of the in-kind transfer transactions on the Bank Plans and noted that this investment opportunity was being offered to Client Plans on the same terms and conditions as the Bank Plans. Based on the foregoing, WTC believed that the terms of the in-kind transfers were fair to participants of the Bank Plans and comparable to and no less favorable than the terms that would have been reached among unrelated third parties. Accordingly, WTC represented that the in-kind transfer transactions were in the best interest of the Bank Plans and their participants and beneficiaries for the following reasons: (a) The impact of the in-kind transfers on the Bank Plans was de minimus because the Funds substantially replicate the CIFs in terms of the investment policies and objectives; (b) the Funds would probably continue to experience relative performance similar in nature to the CIFs given the continuity of investment objectives and policies, management oversight and portfolio management personnel; (c) the in-kind transfers would not adversely affect the cash flows, liquidity or investment diversification of the Bank Plans; and (d) the benefits to be derived by the Bank Plans and their participants by investing in the Funds (e.g., broader distribution permitted of the Funds to different types of plans impacting positively on asset size of the Funds and resulting in cost savings to shareholders) would more than offset the impact of minimum additional expenses that may be borne by the Bank Plans.

In opining on the appropriateness of the in-kind transfers, WTC represented that it conducted an overall review of the Bank Plans, including the Bank Plan documents. WTC stated that it also examined the total investment portfolios of the Bank Plans to ascertain whether or not the Bank Plans were in compliance with their investment objectives and policies. Further, WTC stated that it examined the liquidity requirements of the Bank Plans and reviewed the concentration of the Bank Plans' assets invested in the CIFs as well as the portion of the CIFs comprised of the assets of the Bank Plans. Finally, WTC stated that it reviewed the diversification provided by the investment portfolios of the Bank Plans. Based on its review and analysis of the foregoing, WTC represented that the in-kind transfer transactions would not adversely affect the total investment portfolios of the Bank Plans, compliance by such Plans with their stated investment objectives and policies, or the cash flows, liquidity or diversification requirements of the Bank Plans.

As Second Fiduciary, WTC represented that it was provided by the Bank with the confirmation statements described in Representation 6. In addition, WTC stated that it supplemented its findings following review of the post-transfer account information to confirm whether or not the in-kind transfer transaction had resulted in the Bank Plans' receipt of shares in the Funds equal in value to the Plans' pro rata share of assets of the CIFs on the conversion date. WTC further represented that it would take such action as it deemed necessary to safeguard the interests of the Bank Plans in the event the confirmation statements did not confirm the foregoing.

Other Opportunities Available for a Client Plan to Invest in the Funds

8. Besides the one-time, in-kind transfer of assets from the CIFs to a comparable Fund, a Client Plan's assets may be invested in the Funds in three other ways. First, a Client Plan may purchase shares in the Funds directly through the Bank. Second, the Bank may transfer a Client Plan's assets from one Fund to another Fund. Third, the Bank may effect a daily automated sweep of uninvested cash of a Client Plan into one or more Funds designated by the Bank.[9] However, all investments

the large number of Plans that had interests in the CIFs, the applicant anticipated that it would take an extended period of time to gather all of the necessary consents from Second Fiduciaries. If consent was given promptly, the applicant saw no reason to delay a Plan's investing in the Funds since a Second Fiduciary would desire the timely investment of the Plan's assets.

Further, the applicant did not believe a staggered conversion would operate to the detriment of a Plan. This was because all asset transfers would be effected at fair market value and proratably among the Plans. Therefore, Plans would have the same asset value immediately before and after the conversion.

[9] The Bank represents that shares of the Funds may also be purchased through CIFs that are not being terminated particularly if the relevant CIF seeks to invest in cash equivalents such as those being held in money market funds. The Bank

Continued

for Client Plans in the Funds must be made pursuant to the Second Fiduciary's written authorization.

With respect to sweep services, where the Bank has investment discretion over a Client Plan, it will not charge separately for the provision of sweep services for uninvested cash balances. Instead, the Bank will charge a single, Plan-level fee, which covers both the sweep service and the management of assets in the sweep vehicle (generally, a short-term investment fund). Such single fee is determined as a percentage of the assets so invested. If the Bank does not have investment discretion with respect to a Client Plan's assets invested in the Funds, it may charge a separate fee for sweep services.[10]

Receipt of Fees by Bank

9. To avoid charging its existing Client Plans any additional Fund-level fees in connection with investment in the Funds and to accommodate the specific needs of certain new Client Plans, the Bank is implementing a fee structure under which, depending on each Client Plan's provisions and the fee arrangements negotiated with the Second Fiduciary, the Plan will not be required to bear any part of the investment advisory fees charged to the Funds by the Bank.[11] This fee structure is an alternative to the crediting mechanisms provided under PTE 77–4, which is also available if (a) negotiated by the Second Fiduciary (provided the conditions contained in PTE 77–4 are met) or (b) investments in the Total Return Bond Fund and Contrarian Stock Fund are involved.[12]

For providing custody and shareholder services to the Funds, the Bank is retaining fees for Secondary Services.[13] With respect to fees for Secondary Services, the Funds are paying the Bank monthly transfer agency fees ranging from .10 percent to .30 percent of the daily net asset value of the Funds.[14] In some instances, fees for Secondary Services may be determined on a per item or a per account basis subject to a cap based on the Funds' daily net asset value.

10. Under the fee structure, the Bank is charging its previously agreed upon Plan-level fees to each Client Plan for services rendered to such Plans as a trustee, directed trustee, investment manager or custodian.[15] All such fees are billed on a quarterly basis and may be paid by the Client Plan sponsor rather than the Client Plan.

The Bank is entitled to receive Fund-level investment advisory fees at a different rate for each Fund that is based on the average net assets for the respective Fund. The investment advisory fees range from .10 percent to .85 percent for the Advantage Funds. With respect to the Ready Cash Investment Fund, the investment advisory fees are tiered. For example, Client Plans investing in the Ready Cash Investment Fund will pay the Bank .40 percent for the first $300 million of average daily net assets of the Fund, .36 percent of the next $400 million and .32 percent for any additional average daily net assets. (At present, the Bank has agreed to waive any fees in excess of .30 percent of average daily net assets until further notice.)

The investment advisory agreements and any changes in the fees will be approved by a majority of the independent members of the Trust's Board of Trustees. The investment advisory fees paid by each of the Funds will be accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees have accrued.

11. For most Client Plans,[16] at the beginning of each month and on the same business day as the receipt of such fees by the Bank, the Bank will credit to each Plan such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds[17] (including investment advisory fees paid by the Bank to third party subadvisers[18]) pursuant to a credit procedure (the Credit Method). The Bank represents that the credited fees will be paid to the Client Plan in cash, except that the credit may be effectuated through the purchase of additional shares of the Funds if the Client Plan makes an election. The purchase of additional shares will occur in lieu of the cash credit on the same day that such credit would have been paid to the Client

explains that CIFs that are not being terminated may invest in shares of mutual funds with similar objectives or in money market funds. The Bank further explains that the authorizations of Second Fiduciaries will be contained in adoption agreements for these CIFs and purchases of shares of the Funds for the CIFs will be effected in accordance with PTE 77–4. The Department, however, offers no opinion on whether PTE 77–4 would apply to investments in the Funds by the non-terminating CIFs.

[10] The Department in a letter, dated August 1, 1986, to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, addressed the application of section 408(b)(2) of the Act to arrangements involving ''sweep services.'' In that letter, the Department set forth several examples to illustrate various circumstances under which violations of section 406(b) of the Act would arise with respect to such arrangements. Conversely, the letter provided that, if a bank provides ''sweep'' services without the receipt of additional compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services), then the provision of ''sweep'' services by the bank would not, in itself, constitute a violation of section 406(b) of the Act. Moreover, including ''sweep'' services under a single fee arrangement for investment management services which is calculated as a percentage of the market value of the total assets under management would not, in itself, constitute an act described in section 406(b)(1), because the bank would not be exercising its fiduciary authority or control to cause a plan to pay an additional fee.

In addition, the letter also discusses the applicability of the statutory exemptions under section 408(b)(6) of the Act (fees for ''ancillary services'') and under section 408(b)(8) of the Act (investments in collective trust funds maintained by such bank) to such ''sweep'' service arrangements.

[11] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Client Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[12] PTE 77–4 conditions exemptive relief on a plan not paying an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act. Section II(c) states further that this condition does not preclude the payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[13] As stated above, the term ''Secondary Service'' does not include brokerage services. In this regard, the applicant anticipates that neither it nor its affiliates will provide brokerage services to the Funds.

[14] The Bank represents that it will continue its practice of waiving secondary fees for the Contrarian Stock Fund and the Total Return Bond Fund. As mentioned previously, the Bank states that PTE 77–4 will apply to transactions involving these Funds.

[15] The applicant represents that all fees paid by the Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act. The Department notes that to the extent there are prohibited transactions under the Act as a result of any services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2) and the regulations thereunder, no relief is being proposed herein for such transactions.

[16] As stated in Representation 9, a Second Fiduciary of a Client Plan who is not interested in using the rebate mechanism discussed in this proposed exemption will invest in the Funds pursuant to PTE 77–4.

[17] As stated above, investments in the Total Return Bond Fund and the Contrarian Stock Fund will be made in conformance with PTE 77–4 and not in accordance with the rebate mechanism described herein.

[18] The Bank notes that if the fee it credits to a Client Plan already includes a third party sub-adviser's fee, no additional credits will be required with respect to the portion of such fee actually paid by the Bank to the sub-adviser.

Plan. Again, all decisions regarding the use of the Credit Method will be made by the Second Fiduciary at the time such fiduciary provides its original written approval of the investment of a Plan's assets in the Funds.

12. The Bank notes that Section II(c) of PTE 77–4 (*id.* at 18733) prohibits the payment of double fees to the fiduciary/investment adviser, by requiring that the plan not pay the investment adviser a plan-level investment management or advisory-type fee with respect to plan assets that are invested in mutual fund shares. The Bank also explains that the condition against duplicate fees can be complied with either by excluding the affected plan assets in determining the plan-level investment management/advisory fee (the Offset Method) or by subtracting a credit representing the plan's pro rata share of the mutual fund-level advisory fee from the plan-level fee (the Subtraction Method).

The Bank represents that the Credit Method satisfies the objective of the double fee prohibition by netting out any additional fees generated for the Bank by investment in the Funds. However, instead of reducing the fees charged at the Plan-level, as is done by the Offset and Subtraction Methods, the Bank states that the Credit Method assesses full fees at both levels and then credits back the Fund-level fees (with the exception of fees for Secondary Services) directly to the Client Plan. Thus, on an ongoing basis, the Bank indicates that Client Plans would pay only the fees previously agreed upon between the Bank and the Second Fiduciary for investment management services without regard to the conversions.

The Bank explains that the Subtraction Method would accomplish essentially the same economic result as the Credit Method. However, under the Subtraction Method, the Bank notes that its fees from the Funds would be deducted from the amounts billed to the Client Plan by the Bank for services, rather than being credited directly to the Client Plan. The Bank states that the Credit Method will restore a Client Plan's investment in the Funds (or overall investment position if it receives the credit in cash) to the level it would have been if the Client Plan had not been charged the Bank's Fund-level fees. The Bank represents that the Credit Method will allow the Bank to maintain its fiduciary fee schedules for its services to Client Plans which is more efficient and less costly than a system employing credits against fiduciary fees. Finally, the Bank explains that use of the Credit Method will permit the Client Plans to retain their fiduciary fee structures despite the change to a new investment vehicle.

Authorization Requirements for Client Plans

13. As stated in Representation 4, the transfer of a Bank Plan's or a Client Plan's assets in exchange for shares of the Funds must be preceded by the prior written authorization of the Second Fiduciary. The Second Fiduciary must also approve the fees to be paid by the Funds to the Bank and, in the case of a Client Plan, the purchase of additional shares of such Funds by the Client Plan with fees credited to the Client Plan by the Bank. In the case of the Bank Plans, the Bank has represented that it intends to use PTE 77–3 with respect to the purchase or sale of shares of the Funds by the Bank Plans and for the receipt of compensation by the Bank.[19] Accordingly, the following authorization requirements would apply to Client Plans only.

For a Client Plan, the authorization is terminable at will by the Second Fiduciary without penalty to the Client Plan upon receipt by the Bank of written notice of termination. A Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form will be supplied to the Second Fiduciary. In general, the Termination Form will be furnished by the Bank to the Second Fiduciary at least once every twelve months or whenever there are increases in the contractual rates of fees due from the Funds to the Bank, for Secondary Services. (See Representation 14.) Termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that, if due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will have one additional business day to complete such sale.

The Termination Form will instruct the Second Fiduciary of a Client Plan that the authorization is terminable at will by the Plan, without penalty to the Plan, upon receipt by the Bank of written notice from the Second Fiduciary, and that failure to return the form will result in the continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

14. In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary, the Bank will provide written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the rate of such fees even though these fees will be rebated by the Bank to the Client Plans. Although the notice will explain the nature and amount of the fee increase of the affected Fund or Funds, it will not be accompanied by the Termination Form. This is because all increases in investment advisory or similar fees will be subject to the annual reauthorizations described in Representation 16.

15. In the event of an addition of a Secondary Service provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan, the Bank will provide, to the Second Fiduciary, at least 30 days in advance of the implementation of such increase, written notice explaining the nature and amount of the additional service for which a fee is charged or fee increased for the affected Fund.[20] Under these circumstances, the notices will be accompanied by the Termination Form with instructions on the use of such form. The instructions will expressly provide an election to the Second Fiduciary to terminate at will any prior authorizations without penalty to the Client Plan and stipulate that failure to return the form will result in the continuation of all authorizations

[19] The Department is not expressing an opinion herein on the applicability of PTE 77–3 with respect to ongoing investments by the Bank Plans in shares of the Funds or to the receipt of fees from the Funds by the Bank.

[20] An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Client Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate the Bank providing notice of the fee increase and a Termination Form.

previously given to the Second Fiduciary. Termination of the authorization by a Client Plan to invest in the Funds will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of the Bank the sale cannot be executed within one business day, the Bank will have one additional day to complete such sale.

16. The Second Fiduciary will be supplied with a Termination Form at least once each year beginning with the calendar year that begins after the date of the notice granting this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to the Bank or changes in other matters in connection with the services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an addition of a Secondary Service for which a fee is charged or an increase in any fees for Secondary Services paid by the Funds to the Bank, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of an addition of a Secondary Service for which a fee is charged or any increase in any fees for Secondary Services.

Audit Requirements

17. The Bank is responsible for establishing and maintaining a system of internal accounting controls for the crediting of the fees. In this regard, the Bank has retained the services of KPMG Peat Marwick, an independent accounting firm, to audit annually the crediting of fees to Client Plans under this program. Such audits will provide independent verification of the proper crediting to the Client Plans. Information regarding fees may be used in the preparation of required financial disclosure reports of the Funds for the benefit of the Client Plans.

By letter dated November 11, 1993, the Auditor has described the procedures that will be utilized in the annual audit of the Credit Method program. Specifically, in performing its audit, the Auditor will: (a) Review and test compliance with the specific operational controls and procedures established by the Bank for making credits; (b) verify, on a test basis, the daily credit factors transmitted to the Bank (or its affiliates) by the Funds; (c) verify, on a test basis, the proper assignment of credit identification fields to the Client Plans; (d) verify, on a test basis, the credits paid in total to the sum of all credits paid to each Client Plan; (e) recompute, on a test basis, the amount of the credit determined for selected Client Plans and verify that the proper credit was made to the proper Client Plan. The Bank and FFS will be the sources of the factual information upon which the Auditor will rely.

In the event that either the internal audit by the Bank or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, the Bank will correct the error. With respect to any shortfall in credited fees to a Client Plan involving cash credits, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by the Bank for the period involved. With respect to any shortfall in credited fees involving a Client Plan where the Second Fiduciary's prior election was to have credited fees invested in shares of a particular Fund, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest based on the greater of either (a) the money market rate offered by the Bank for the period involved or (b) the total rate of return for shares of the Funds, including dividends, that would have been acquired during such period. Any excess credits made to a Client Plan will be corrected by an appropriate deduction and reallocation of cash during the next payment period to reflect accurately the amount of total credits due to the Plan for the period involved.

Ongoing Disclosures to Client Plans

18. On an annual basis, the Bank will provide the Second Fiduciary of a Client Plan with a copy of the current prospectus for the Funds and upon such fiduciary's request, a copy of the Statement of Additional Information which contains a description of all fees paid by the funds to the Bank. In addition, the Bank will provide the Second Fiduciary with a copy of a financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes the Auditor's findings within 60 days of the preparation of the report. Further, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they may arise.

19. In summary, the Bank represents that the transactions described herein will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Funds will provide the Bank Plans and Client Plans with a more effective investment vehicle than the CIFs maintained by the Bank without any increase in investment advisory or similar fees paid to the Bank.

(b) With respect to the transfer of a Bank Plan's or a Client Plan's CIF assets into a Fund in exchange for Fund shares, a Second Fiduciary has or will authorize in writing, such transfer prior to the transaction only after full written disclosure of information concerning the Fund.

(c) Each Bank Plan or Client Plan has or will receive shares of the Funds in connection with the transfer of assets of a terminating CIF which have a total net asset value that is equal to the value of such Plan's pro rata share of the CIF assets on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Funds which comply with Rule 17a-7 of the '40 Act, as amended, and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets.

(d) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will send by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information: (1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) of the '40 Act; (2) the price of each such security involved in the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(e) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank will sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information: (1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (2) the number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(f) The price that has been or will be paid or received by a Bank Plan or a Client Plan for shares of the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which was or would have been paid or received by any other investor at that time.

(g) No sales commissions or redemption fees have or will be paid by a Bank Plan or a Client Plan in connection with the purchase of shares of the Funds.

(h) The Bank has not and will not receive any 12b-1 fees in connection with the transactions.

(i) Any authorizations made by a Client Plan regarding investments in a Funds and fees paid to the Bank (including increases in the contractual rates of fees for Secondary Services that are retained by the Bank) will be terminable at will by the Client Plan, without penalty to the Client Plan and will be effected within one business day following receipt by the Bank, from the Second Fiduciary, of the Termination Form or any other written notice of termination, unless circumstances beyond the control of the Bank delay execution for no more than one additional business day.

(j) The Second Fiduciary has received or will receive written notice accompanied by the Termination Form with instructions on the use of the form at least 30 days in advance of the implementation of any increase in the rate of any fees for Secondary Services that the Bank provides to the Funds.

(k) All dealings by or between the Client Plans, the Funds and the Bank will be on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons who have investments in the terminating CIFs and from whom approval is being sought for the transfer of Plan assets to the Funds. In this regard, interested persons will include WTC, the Second Fiduciary of the Bank Plans; active participants in the Bank Plans; and Second Fiduciaries of the Client Plans. Notice will be provided to each Second Fiduciary by first class mail and to active particpants in the Bank Plans by posting at major job sites. Such notice will be given to interested persons within 14 days following the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and give interested persons the right to comment on and/or to request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within 44 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (Collectively, the Plans) Located in New York, New York

[Application Nos. D–09694 thru D–09697]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the stock index ''exchange of futures for physicals'' (EFP) transaction between the General Motors Retirement Program for Salaried Employees (the Salaried Plan) and the General Motors Hourly-Rate Employees Pension Plan, Saturn Individual Retirement Plan for Represented Team Members, and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Hourly Plan) which occurred on November 30, 1993 in the amount of approximately $730 million, provided the following conditions were met:

(a) The terms of the EFP transaction were at least as favorable to the Plans as the terms which would have been available in an arm's-length EFP transaction involving unrelated parties;

(b) Each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved on November 30, 1993, based on EFP quotations obtained from at least six independent broker-dealers capable of engaging in such an EFP at the time of the transaction;

(c) Wells Fargo Institutional Trust Company, N.A. (WFITC), as an independent fiduciary for the Salaried Plan, determined that the EFP transaction was prudent and in the best interests of the Salaried Plan and its participants and beneficiaries at the time of the transaction;

(d) WFITC monitored the EFP transaction on behalf of the Salaried Plan and took whatever action was necessary to safeguard the interests of the Salaried Plan at the time of the transaction;

(e) General Motors Investment Management Corporation (GMIMCo), as the fiduciary for the Hourly Plan, determined that the EFP transaction was prudent and in the best interests of the Hourly Plan and its participants and beneficiaries at the time of the transaction; and

(f) GMIMCo monitored the EFP transaction on behalf of the Hourly Plan and took whatever action was necessary to safeguard the interests of the Hourly Plan at the time of the transaction.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective November 30, 1993.

Summary of Facts and Representations

1. The Plans were established by General Motors Corporation (GMC) to provide retirement benefits for eligible hourly and salaried employees of GMC and its affiliates. The aggregate fair market value of the assets of the Plans was approximately $40.5 billion as of September 30, 1993. The Plans covered a total of approximately 831,532 active and retired participants or their beneficiaries as of October 1, 1993.

The assets of the Plans involved in the transaction described herein were held by: (i) Mellon Bank, N.A., acting as directed master trustee and custodian; (ii) Bankers Trust Company, acting as directed master trustee and custodian; (iii) WFITC, acting as custodian for assets its manages; and (iv) Chemical Bank, acting as custodian for certain assets managed by other investment managers.

2. The Pension Investment Committee of GMC (the PIC) is a committee established by the Finance Committee of the Board of Directors of GMC (the Finance Committee). The Finance Committee is the ''named fiduciary'' for the Plans. Certain fiduciary responsibilities have been delegated by the Finance Committee to the PIC, including the responsibility for allocating funds among asset classes within broad investment guidelines, recommending changes in broad investment guidelines to the Finance Committee, and monitoring the investment performance of the assets of the Plans. The PIC is comprised of officers of GMC and its affiliates.

The PIC carries out its in-house investment oversight responsibility through GMIMCo, a separately-

incorporated, wholly-owned subsidiary of GMC. Certain members of the PIC serve on the Board of Directors of GMIMCo. All GMIMCo activities are subject to the general direction of the PIC.

The Finance Committee, as the ''named fiduciary'' for the Plans, reviews the actions of the PIC to evaluate performance and to assure that the Finance Committee's delegation of authority continues to be prudent.

3. On November 30, 1993, the Plans entered into an EFP with each other in the amount of approximately $730 million. An EFP is an integrated transaction where one party buys the underlying (or ''physical'') commodity/security and simultaneously sells a related futures contract while the other party sells the underlying commodity/security and simultaneously buys a futures contract.[21] However, unlike an exchange-traded futures contract, an EFP is privately negotiated and is not required to be competitively executed in an exchange trading pit.[22] The parties to an EFP typically negotiate a private contract outside the trading pit covering the terms of the exchange of the underlying commodity/security and the futures position. The price, quantity and characteristics of the underlying commodity/security that is bought or sold will affect the final price and quantity of the futures position exchanged.

In a typical stock-index EFP, a customer (such as an employee benefit plan) will sell a portfolio of common stocks which generally replicates the Standard & Poors 500 Composite Stock Price Index (the S&P 500 Index). In exchange for the stocks, the customer will receive cash in an amount equal to the current value of the stock portfolio and a corresponding long S&P 500 futures position.[23] To effect the transaction, the customer will contact its various broker-dealer/futures commission merchants (''broker-dealers''), and will offer the stocks in return for (1) a cash payment equal to the market price of the stocks at the close of the New York equities market (e.g. the New York Stock Exchange or American Stock Exchange) on that date and (2) a corresponding long S&P 500 futures position established through that broker-dealer and priced at a ''basis'' between the index and the futures such that the cash plus futures is roughly equivalent in both value and market exposure to the stocks.[24]

However, the applicant states that two customers may negotiate such an EFP transaction between themselves and use the broker-dealer merely to facilitate the trade's execution by reporting and documenting the stock and futures trades, as required by exchange rules.

4. On November 30, 1993, the Hourly Plan sold approximately $730 million of stock and simultaneously purchased approximately $730 million of S&P 500 futures contracts in an EFP transaction with the Salaried Plan.[25] Thus, the Salaried Plan purchased approximately $730 million of stocks and sold approximately $730 million of S&P 500 futures in the transaction. WFITC acted as an independent fiduciary for the Salaried Plan in the EFP transaction (as discussed further below).

The Hourly Plan

5. With respect to the Hourly Plan, the applicant states that in November 1993 the Plan needed to raise cash for upcoming benefit payments to the participants and beneficiaries. In addition, the PIC had modified the Hourly Plan's asset allocation strategy by increasing the allocation for investments in asset classes other than the Canadian and U.S. large capitalization equity securities.

GMIMCo was responsible for implementing the PIC's asset allocation strategy in the most cost-effective manner. GMIMCo analyzed the Hourly Plan's equity holdings, futures positions, overall asset mix, allocation of assets among equity investment managers, and upcoming liquidity needs. Based on this review, GMIMCo determined that approximately $730 million of equity holdings, managed by twelve equity managers, eleven of whom were external investment advisers, should be liquidated to raise cash to meet benefit payments and to fund investments in other asset classes to meet the PIC's asset allocation guidelines.

GMIMCo also determined that, simultaneous with the sale of stocks, the Hourly Plan should purchase approximately $730 million of S&P 500 futures contracts so that the designated funds would continue to be exposed to the equity markets until the cash was either used to pay benefits or placed with managers in other investment areas. The PIC had previously authorized the use of futures to facilitate the Hourly Plan's asset allocation objectives.

6. GMIMCo evaluated the following alternatives for selling stocks and purchasing equity futures for the Hourly Plan:

(a) Direct each of the twelve investment managers to independently liquidate securities in the open market and GMIMCo would independently purchase futures;

(b) Direct each of the twelve investment managers to transfer stocks to a central account and GMIMCo would sell the stocks via portfolio trades in the open market with simultaneous futures purchases;

(c) Engage in an EFP with a broker-dealer; or

(d) Engage in an EFP with the Salaried Plan.

7. GMIMCo states that separate open market trades through the investment managers under alternative (a) would have involved the greatest risks and potentially the highest costs. Under this alternative, as each manager sold stocks, the manager would have advised GMIMCo of its actions and GMIMCo would have then purchased futures to maintain the overall equity exposure. Since each individual stock could have moved in a different direction and by a different amount relative to the broader equity index (i.e. ''tracking error''),[26] the Hourly Plan could have incurred significant costs. Since the futures purchases would not have been simultaneous with the stock sales, the

[21] A futures contract is an agreement in which one party agrees to sell and another party agrees to buy a specific quantity of a commodity at a future date. Upon entering into a futures contract, the parties establish the price for the future sale or purchase. The Commodity Futures Trading Commission (CFTC) is the federal agency responsible for regulating futures trading in all tangible and intangible ''commodities'' including securities. Unless exempted by the CFTC, all futures contracts must be traded on CFTC-designated exchanges called contract markets.

[22] See Section 4c(a) of the Commodity Exchange Act and CFTC Rule 1.38 (17 CFR 1.38(a)) which require that all futures transactions be executed openly and competitively except for transactions which are executed noncompetitively in accordance with written rules of the exchange which have been submitted to and approved by the CFTC, specifically providing for the noncompetitive execution of such transactions. The applicant states that this exception applies to EFPs and that all futures exchanges have CFTC-approved rules permitting EFPs to be consummated.

[23] The futures contract ''bought'' by the customer represents a commitment to pay the cash value of the portfolio of S&P 500 securities at a specified time in the future.

[24] The applicant states that the market price of an S&P 500 futures contract will normally exceed the market price of the underlying portfolio of stocks comprising the index (the ''cash price'') by a certain amount (i.e. the ''basis'') primarily due to the ''cost of carry.'' The ''cost of carry'' relates to the difference between the U.S. Treasury Bill rate and the dividend yield on the stock portfolio. In addition, the ''basis'' reflects the deliverable supply of the underlying stocks and the expectations of market participants.

[25] The applicant represents that GMIMCo consulted with the Chicago Mercantile Exchange (CME) and the CFTC, both of which advised that an EFP between the Plans would be consistent with their applicable rules.

[26] Tracking error is the mismatch of price movement on the individual stock versus the index.

Hourly Plan would have also experienced ''timing mismatches'' which could have resulted in significant costs. GMIMCo states that tracking error and timing mismatches could have resulted in costs in excess of $4 million and concluded that there was no incentive to undertake these risks when lower cost alternatives were available.

In addition, under alternative (a), the market impact cost associated with the stock transactions could have been approximately $7 million. GMIMCo calculated this cost by considering such factors as: (i) The managers in the aggregate held over 1500 stocks, and over 600 were stocks common to more than one manager, which would have caused the managers to compete with each other in selling the stocks; (ii) for over 50% of the individual stocks in the portfolio, the amount of the stock held represented more than 10% of the average daily trading volume for such stock; (iii) for about 25% of the individual stocks in the portfolio, the amount of the stock held exceeded 50% of the average daily trading volume for such stock; and (iv) for over 10% of the individual stocks in the portfolio, the amount of the stock held represented more than one day's trading volume for such stock. The market impact costs associated with the futures transactions, which would have represented about 10% of the daily volume on the CME, were estimated to be at least $1 million.

Under alternative (a), GMIMCo estimated that the commission costs at approximately $.06/share on 21.1 million shares would have been approximately $1.3 million. With twelve managers with over 1500 stock names, GMIMCo estimated that the master trustee recordkeeping fees would have been approximately $30,000.

In total, GMIMCo estimated that alternative (a) would have cost the Hourly Plan approximately $13 million.

8. With respect to separate open market trades through GMIMCo under alternative (b), GMIMCo states that such transactions would have resulted in lower costs resulting from tracking error (approximately $2 million). In addition, the timing mismatches would have been eliminated because GMIMCo could have simultaneously executed both the sale of the stocks and the purchase of the futures. GMIMCo states that alternative (b) would have resulted in lower market impact cost (approximately $3.5 million) since the time period for execution would have been more effectively controlled and one manager would not be selling in competition with another manager. However, the market impact cost for the futures would still have been approximately $1 million.

GMIMCo states that the commission costs on equity portfolio trades versus individual stock trades would have been lower (approximately $.5 million) under alternative (b), but master trustee fees would have been higher at about $50,000.

In total, GMIMCo estimated that alternative (b) would have cost the Hourly Plan approximately $7 million.

9. With respect to an EFP with a broker-dealer under alternative (c), GMIMCo states that such a transaction would have eliminated the timing mismatch risk and incorporated the market impact, tracking error and commission costs into the pricing of the EFP quoted by the broker-dealer. Therefore, on November 30, 1993, the date of the proposed EFP, GMIMCo sought EFP bids and offers from eight broker-dealers—First Boston, Goldman Sachs, J.P. Morgan, Lehman Bros., Merrill Lynch, Morgan Stanley, Paine Webber, and Salomon Brothers. GMIMCo requested bid and offer quotes from each broker-dealer on the proposed transaction. GMIMCo provided the broker-dealers with the characteristics of the portfolio, for example, how many stocks traded on exchanges such as the NYSE and AMEX and on the NASDAQ. The broker-dealers were advised that the portfolio was valued at approximately $730 million, based on the prior day's closing value, and involved approximately 21,147,800 shares. The broker-dealers also were advised regarding the tracking error of the portfolio versus the S&P 500 Index. The broker-dealers were provided with the general liquidity characteristics of the portfolio, including the fact that: (i) For over 50% of the individual stocks in the portfolio, the amount of stock held represented more than 10% of the average daily trading volume for such stock, (ii) for about 25% of the individual stocks in the portfolio, the amount of the stock held exceeded 50% of the average daily trading volume for such stock, and (iii) for over 10% of the individual stocks in the portfolio, the amount of the stock held represented more than one day's trading volume for such stock.

Based on these characteristics, two broker-dealers declined to participate. The remaining six broker-dealers provided the following EFP quotations, with a bid to buy the futures and an offer to sell the futures expressed as a discount or premium on the S&P 500 Index closing price on the date of the transaction, as noted in the table below. In each case, the broker-dealers agreed to buy or sell the stocks involved at the S&P 500 Index closing price as of the date of the transaction.

Broker-dealer (B–D)	B–D's bid to buy futures	EFP quotes	B–D's offer to sell futures
A	−2.37		1.86
B	−2.39		3.29
C	−3.15		3.85
D	−3.95		4.55
E	−5.50		5.90
F	−5.37		6.07
Best Prices	−2.37		1.86
Midpoint Between Best Prices		−0.255	
S&P 500 Index Close (11–30–93)		461.79	
EFP Futures Price (agreed to by parties based on midpoint)		461.535	

Of all of the broker-dealers providing quotes, Broker-Dealer A offered the best price for the Hourly Plan to buy futures—i.e. 1.86, the lowest premium above the S&P 500 Index closing price.

GMIMCo determined that an EFP with the Salaried Plan under alternative (d) would be the least costly alternative. Under this alternative, the Hourly Plan would engage in the EFP with the Salaried Plan at the midpoint of the best EFP bid quoted by the broker-dealers to sell stocks and buy futures (i.e. −2.37) versus the best EFP offer quoted by the broker-dealers to buy stocks and sell futures (i.e. 1.86). Thus, alternative (d) provided the Hourly Plan with a better price to buy the futures because the price of the futures based on the −0.255 midpoint (i.e. 461.79 − 0.255 = 461.535) would be more favorable to the

Hourly Plan than the price offered by Broker-Dealer A based on the 1.86 premium above the closing price of the index (i.e. 461.79 + 1.86 = 463.65).

GMIMCo states that alternative (d) saved the Hourly Plan approximately $3.4 million, which otherwise would have been paid to Broker-Dealer A. This cost savings resulted from the fact that the difference between 463.65 (the best price at which the Hourly Plan could have bought futures in an EFP with Broker-Dealer A) and 461.535 (the price at which the Hourly Plan bought futures in the EFP with the Salaried Plan) was 2.115 index points or approximately 46 basis points.[27]

GMIMCo states that the transaction eliminated the tracking error, timing mismatch risk and market impact costs. The Hourly Plan also reduced costs under alternative (d) since the stock transfers were directly between the respective investment managers via master trustee bookkeeping entries, which reduced one layer of stock transfers and resulted in savings of approximately $30,000.

GMIMCo determined that it was in the best interests of the Hourly Plan and its participants and beneficiaries to sell the stocks and purchase the futures through an EFP with the Salaried Plan. Accordingly, on November 30, 1993, the Hourly Plan purchased from the Salaried Plan 948 December S&P 500 futures contracts at a price of 461.50 and 2216 December S&P 500 futures contracts at a price of 461.55 or 3164 total contracts for an average price of 461.535.

The Salaried Plan

10. On November 19, 1993, GMIMCo appointed WFITC to act as an independent fiduciary for the Salaried Plan for the proposed EFP with the Hourly Plan. GMIMCo granted WFITC complete discretion to act on behalf of the Salaried Plan for the proposed transaction and to take any appropriate action necessary to safeguard the interests of the Salaried Plan. WFITC was engaged as independent fiduciary prior to the transaction with the understanding that it would determine whether it was in the best interests of the Salaried Plan and its participants and beneficiaries: (i) To purchase stocks and sell futures in the amount of approximately $730 million; (ii) to engage in an EFP for the purchase of stock and the sale of futures; and (iii) to engage in the EFP with the Hourly Plan.

11. With respect to the determination for the Salaried Plan to purchase stocks and sell futures, WFITC represents that the Salaried Plan's holdings in equities and equity futures were approximately equal to the PIC's designated asset allocation to the U.S. and Canadian equity markets. The policy structure for the Salaried Plan established by the PIC had allocated a specified percentage of the Plan's assets to large capitalization U.S. and Canadian equity securities. This fact coupled with the fact that the Plan held futures in an amount valued well in excess of the value of the proposed transaction led WFITC to conclude that the sale of long futures and their replacement by purchasing U.S. and Canadian equity securities would be consistent with the asset allocation policy of the PIC. In this regard, WFITC believed that the PIC's asset allocation strategy for the Salaried Plan was reasonable. Thus, WFITC concluded that the proposed sale of the futures by the Salaried Plan would be appropriate for and in the best interest of the Salaried Plan. This conclusion was based upon WFITC's view that while financial futures are a legitimate method of achieving temporary exposures to markets, there are differences in holding financial futures as opposed to securities for the long term. These differences include ''tracking error risk'' and ''basis risk.''

WFITC states that ''tracking error risk'' is defined in this instance as the variance in performance of a given portfolio of securities as compared to the index underlying a particular stock index futures contract. In the case of the proposed transaction, WFITC determined that such tracking error risk existed between the stock index futures contracts held temporarily by the Salaried Plan and the portfolio of cash securities that it had determined by policy to hold for the long term. Therefore, WFITC concluded that the best interests of the Salaried Plan would be served by replacing the stock index futures contracts with stocks reflecting the strategies of the selected investment managers.

WFITC states further that ''basis risk'' is defined in this instance as the variance in value between an index and a fully collateralized position in stock index futures contracts that is based on the return of the same index. Such variance in value arises because, while stock index futures are priced to equal the underlying index at expiration, prior to expiration they are priced in an auction market that is partially independent of the auction markets in which the securities in the underlying index are priced. Therefore, WFITC concluded that the interests of the Salaried Plan would be served by eliminating the basis risk of the Salaried Plan by replacing the stock index futures contracts with stocks in an amount up to $730 million reflecting the strategies of the selected investment managers.

12. With respect to the determination for the Salaried Plan to engage in an EFP, WFITC evaluated the various methods the Plan could use in selling futures and purchasing equity securities. WFITC began its analysis with the premise that the Salaried Plan should reduce or eliminate transaction costs, including brokerage commissions, dealer bid/offer spreads, market impact and opportunity costs. Based on WFITC's experience in the futures and equity markets, WFITC believed that EFP transactions are often the most cost effective method for simultaneously selling index futures and buying equity securities. WFITC states that because in an EFP both the sale of futures and the purchase of securities is achieved in a single simultaneous transaction with a single counterparty, all sources of transaction costs are subsumed in a single negotiated price, reflected in the price at which the futures in the EFP are traded.

WFITC represents that the negotiated price of an EFP can be readily compared for cost-effectiveness against an ideal hypothetical transaction with no transaction costs whatsoever. Such an ideal transaction would consist of simultaneously (1) buying stocks at the last reported sale price for each stock as of the moment of the transaction, and (2) selling the stock index futures position such that the futures are priced at or above a ''fair economic value'' with no brokerage commissions, dealer bid/offer spread, market impact, or opportunity cost.

WFITC determined the fair economic value of the futures by calculating the difference between (1) the interest income foregone through the expiration date of the futures by having to liquidate positions in money-market instruments in order to provide cash required to settle the stock purchases, and (2) the dividend income estimated to be earned by holding stocks rather than futures contracts through the expiration date of the futures. On November 30, 1993, the date of the transaction, there were 20 days remaining until the expiration of the futures contracts held by the Salaried Plan. WFITC states that the prevailing money market interest rates at the time were 3.10%. Therefore, the amount of interest that would have been earned for 20 days on the cash required to settle the stock purchases, expressed

[27] Note: 2.115/461.79 = .00458 = .458% or 45.8 basis points, since .01% equals one basis point. Thus, the Hourly Plan would have paid Broker-Dealer A approximately $3.4 million ($730 million × .0046).

in S&P 500 Index points based on the closing price of 461.79, was equal to a premium of approximately 0.78 index points.[28] In addition, WFITC represents that the dividend income that was expected to be earned on the stocks through the expiration date of the futures, expressed in S&P 500 Index points based on the closing price of 461.79, was equal to a premium of approximately 0.59 index points.[29] Given these factors, WFITC calculated that the fair economic value of the futures contracts to be equal to a premium of 0.19 S&P 500 Index points above the quoted price of the index.[30] Thus, with the S&P 500 Index published at 461.79 at the close of trading, the fair economic value of the futures contracts as of November 30, 1993 was calculated by WFITC to be 461.98 (i.e. 461.79 + 0.19 = 461.98). The applicant states that the actual closing price for the December futures contracts on November 30, 1993 was 461.85, as traded on the CME.

WFITC also represents that the negotiated price of an EFP can be readily compared for cost-effectiveness against the estimated transaction costs of selling the futures in the open futures market and purchasing stock in the open stock market. For purposes of this analysis, WFITC assumed that the transaction would be approximately $730 million of stocks reflecting the then current value of the securities held by the selected investment managers. WFITC estimated commissions by assuming a rate of $.01 per share. At this rate, the Salaried Plan would have paid brokerage commissions for purchasing listed securities of approximately $186,286 or 2 basis points (expressed as a percentage of the total value of the stocks).[31] WFITC estimated the dealer bid/offer spread by measuring the difference between the last reported sale for each security and its quoted offered price. Using this technique, the Salaried Plan would have paid a total dealer bid/offer spread of approximately $2,050,384 or 28 basis points.[32] WFITC states that it did not estimate any savings to the Salaried Plan for brokerage commissions on the sale of the futures contracts because such commissions would have been paid regardless of whether the transaction was made in the open market or through an EFP.[33] WFITC states further that it made no estimate of market impact or opportunity costs. Thus, WFITC estimated that the total costs to execute the transactions in the open market would have been at least $2,236,670 or approximately 30 basis points.

Using the pricing methodology described below, WFITC determined that the total cost to the Salaried Plan of transacting the EFP with the Hourly Plan would be approximately $701,225 or 9.6 basis points (expressed as a percentage of the total value of the stocks). This cost figure was calculated by comparing the price of the futures contracts negotiated in the EFP based on the midpoint between the best EFP quotations (461.535) to the fair economic value of the futures as calculated by WFITC based on a premium of 0.19 S&P 500 Index points above the closing price of the index (461.98), resulting in a difference of 0.445 S&P 500 Index points (461.98 − 461.535 = 0.445). The difference of 0.445 index points represented approximately 9.6 basis points based on the S&P 500 Index closing price of 461.79.[34]

WFITC compared the cost of 9.6 basis points to transact the EFP with the Hourly Plan to the estimate of approximately 30 basis points to execute the proposed transaction in the open market, and concluded that there was an advantage of 20.4 basis points to transacting the EFP with the Hourly Plan (or approximately $1,535,445). WFITC believed that a projected savings of 20.4 basis points for the EFP transaction was a conservative estimate of the advantages for the Salaried Plan because, in establishing the cost estimates for the open market alternative, WFITC had assumed a low commission rate of $.01 per share and had assumed no market impact or opportunity costs for open market trading. Thus, WFITC believed that 20.4 basis points would be the minimum advantage to transacting the EFP with the Hourly Plan.

13. WFITC determined that it would permit the Salaried Plan to engage in an EFP only if the price determination methodology was fair to the Salaried Plan, was in the best interests of the Salaried Plan and was consistent with general market standards. In this regard, WFITC represents that it was involved in the EFP transaction, including the pricing determinations that would be made, throughout the proceedings. For example, prior to the consummation of the transaction, WFITC determined along with GMIMCo the broker-dealers from which bids should be solicited.

WFITC reviewed the information that was delivered to these brokers as to the nature of the securities portfolios to be transacted as part of the EFP. Additionally, WFITC performed an analysis of the portfolio, using analytic software provided by BARRA, an independent investment technology firm. This analysis provided WFITC with the correlation between the securities in the portfolio and the S&P 500 futures contracts.

WFITC and GMIMCo each determined independently that a single broker—Broker-Dealer A—had quoted both the highest bid and the lowest offer of any of the brokers who provided EFP quotations. Specifically, Broker-Dealer A bid to sell the stocks at the closing price of the S&P 500 Index and buy the futures at a discount of 2.37 S&P 500 Index points below the closing value of the S&P 500 Index. Since the other brokers had bid larger discounts to buy the futures, Broker-Dealer A's bid was the best price from the prospective of the Salaried Plan. As noted above in the discussion involving GMIMCo, Broker-Dealer A had also offered to buy the stocks at the S&P 500 Index closing price and sell the futures at a premium of 1.86 S&P 500 Index points, or approximately 40 basis points above the closing price of the S&P 500 Index. Since no other broker had offered to sell futures at a lower premium relative to the index, Broker-Dealer A's offer price was also best from the perspective of the Hourly Plan.

WFITC determined that the Salaried Plan's transacting the EFP with the Hourly Plan at the midpoint between Broker-Dealer A's bid price and offered price was better than trading in an EFP directly with Broker-Dealer A at its bid price. Specifically, by trading with the Hourly Plan, the Salaried Plan bought stocks at the closing price of the S&P 500 Index and sold futures at a discount of 0.255 S&P 500 Index points, or approximately 5 basis points below the

[28] Note: 0.78/461.79 = .00168 = .168% or approximately 16.8 basis points. The interest income expected through expiration would have been calculated in dollars as follows: $730 million × .00168 = 1,226,400.

[29] Note: 0.59/461.79 = .00127 = .127% or approximately 12.7 basis points. The dividend income expected through expiration would have been calculated in dollars as follows: $730 million × .00127 = $927,100.

[30] Note: 0.19/461.79 = .00041 = .041% or approximately 4.1 basis points. The fair economic value of the futures contracts would have been calculated in dollars as follows: $730 million × .00041 = $299,300.

[31] Note: $186,286/$730 million = .0002 or .02%.

[32] Note: $2,050,384/$730 million = .0028 or .28%.

[33] With respect to the futures portion of the EFP, WFITC and GMIMCo mutually agreed upon an independent CME clearing member broker-dealer that presented the EFP to the CME, and conducted the necessary reporting and documentation, ensuring that the EFP was accepted by the CME and that the futures positions were properly recorded. The broker-dealer received the customary commission for such services from each Plan. Neither WFITC nor GMIMCo received any of this compensation.

[34] Note: 0.445/461.79 = .00096 or .096%, which is 9.6 basis points.

closing price of the S&P 500 Index.[35] If the Salaried Plan had traded with Broker-Dealer A directly, it would have bought stocks at the identical price that was transacted via the EFP (i.e. the closing price of the S&P 500 Index). However, the Salaried Plan would have sold futures to Broker-Dealer A at a discount of 2.37 S&P 500 Index points, or approximately 51 basis points below the value of the S&P 500 Index.[36] Thus, the price for selling the futures would have been 46 basis points lower than the price the Salaried Plan received in the EFP transaction with the Hourly Plan.

WFITC determined that the price determination methodology was fair to the Salaried Plan, was in the best interests of the Salaried Plan, and was consistent with general market standards, because the methodology included a thorough exploration of EFP prices in the marketplace. WFITC states that the EFP price achieved for the Salaried Plan was at least as favorable as any price the Plan could have received from an independent broker-dealer capable of executing the transaction on November 30, 1993.

14. In summary, the applicant represents that the transaction met the statutory criteria contained in section 408(a) of the Act because: (a) The terms of the EFP were at least as favorable to both the Salaried Plan and the Hourly Plan as the terms which either Plan could have received in an arm's-length transaction involving an unrelated party; (b) each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved, based on EFP quotations obtained from independent broker-dealers capable of engaging in such an EFP at the time of the transaction; (c) WFITC, as an independent fiduciary for the Salaried Plan, determined that an EFP with the Hourly Plan was in the best interests of the Salaried Plan and its participants and beneficiaries; (d) WFITC monitored the EFP transaction and took appropriate actions necessary to safeguard the interests of the Salaried Plan; (e) GMIMCo, as fiduciary for the Hourly Plan, determined that an EFP with the Salaried Plan was in the best interests of the Hourly Plan and its participants and beneficiaries; and (f) GMIMCo monitored the EFP transaction and took appropriate actions necessary to safeguard the interests of the Hourly Plan.

[35] Note: 0.255/461.79 = .0005 or .05%.

[36] Note: 2.37/461.79 = .0051 or .51%.

Notice to Interested Persons

The applicant states that notice to interested persons shall be made within twenty (20) business days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption (the Proposal) as published in the **Federal register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. The applicant will post a copy of the Proposal and the supplemental statement in areas customarily used for notices to employees regarding employee benefit and labor relations matters at GMC locations where employees covered by the Plans are employed. The applicant will send to each of the unions representing such employees a copy of the Proposal and will request that each union post these materials at local union halls within twenty (20) business days of the publication of the Proposal in the **Federal Register**. Finally, the applicant will send a copy of the Proposal and supplemental statement to the presidents (or comparable officers) of the approximately 230 GMC retiree organizations and clubs as a reasonable means of providing notice to Plan participants who are retirees of GMC or an affiliate.

Comments or requests for a public hearing must be received by the Department within sixty (60) days following the publication of the Proposal in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 219–8194. (This is not a toll-free number.)

Law Offices of Bryson and Berman, P.A. Employees' Pension Plan and Trust (Pension Plan) and Law Offices of Bryson and Berman, P. A. Employees' Profit Sharing Plan and Trust (P/S Plan, Collectively; the Plans) Located in Miami, Florida

[Application Nos. D–09884 and D–09885]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the two individual accounts in the Plans of Rodney W. Bryson of two adjacent parcels of vacant land (Lots 3 and 4, collectively; the Lots) to Mr. Rodney Bryson (Mr. Bryson), a trustee of the Plans and a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Accounts in this transaction will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser; and

(c) the Accounts will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plans were established in 1976 and have a total of three participants, including Mr. Bryson and Mark S. Berman (Mr. Berman). Mr. Bryson and Mr. Berman are the trustees of the Plans and are also the sole stockholders of Law Offices of Bryson and Berman, P.A. (the Employer). The Plans are a money purchase pension plan and a profit sharing plan. The Plans provide for individually directed accounts. As of June 30, 1994, the Pension Plan and the P/S Plan had $386,380 and $487,419 in net assets, respectively. As of the same date, Mr. Bryson's account in the Pension Plan (P/P Account) and the P/S Plan (P/S Account, collectively; the Accounts) had $175,201 and $214,134 in net assets, respectively. The Employer is a professional association incorporated in the State of Florida, which specializes in trial law.

2. The Lots were originally acquired as follows. Pursuant to the direction of Mr. Bryson, on December 14, 1989, the Accounts purchased twenty acres of vacant land located in Broward County, Ft. Lauderdale, Florida, from Suzanne F. Sinaiko, an unrelated third party for a total consideration of $375,000. On the same day, the Accounts sold one half of the twenty acres to Richard French and Mrs. Claudia French (the Frenchs), unrelated third parties, for $187,500. As a result, at the close of business on December 14, 1989, the Accounts owned ten acres of vacant unimproved land (the Land) in Broward County, Ft. Lauderdale, Florida. The applicant represents that at the time of acquisition, the Lots represented 38% of the P/P Account and 38% of the P/S Account.[37]

[37] The Department expresses no opinion as to whether the Plans' acquisition and holding of the Lots in the Accounts violated any provision of part 4 of title I of the Act.

3. Consequently, the Accounts, in conjunction with the Frenchs, made certain improvements to the Land. These improvements were made by independent third party companies, and consisted of platting the Land, constructing an access road, providing fill and landscaping. In this regard, it is represented that the P/P Account paid $16,628 in capital improvement costs, and the P/S Account paid $20,322 in capital improvement costs. The Land was platted into two residential lots of approximately 5 acres each (Lots 3 and 4). The Lots were allocated among the Accounts as follows. The P/P Account owned 45% of Lot 3 and Lot 4 (two 45% Interests), and the P/S Account owned 55% of Lot 3 and Lot 4 (two 55% Interests, collectively; Four Interests).

4. Lot 3 was appraised on April 19, 1994 (the Appraisal), by Thomas R. Wachtstetter A.S.A, I.F.A., an independent general appraiser certified in the State of Florida (Mr. Wachtstetter). In the Appraisal, Mr. Wachtstetter stated that Lot 3 contains 4.98 acres and is vacant land. In establishing the fair market value of Lot 3, Mr. Wachtstetter relied on the sales comparison approach to value and determined that the fair market value of Lot 3 was $135,000. On October 26, 1994, Mr. Wachtstetter submitted an addendum to the Appraisal (the Addendum), which addressed the fair market value of Lot 4. In the Addendum he stated that all information contained in the Appraisal of Lot 3 is also applicable in estimating the value of Lot 4. Specifically, Mr. Wachtstetter represented that Lot 3 and Lot 4 are adjacent, nearly the same size, and neither Lot has any apparent easements, encroachments or environmental concerns which would adversely affect the value of that Lot. Mr. Wachtstetter concluded that the estimated value of each Lot is $135,000 each, for an aggregate fair market value of $270,000. Mr. Wachtstetter also addressed the assemblage value of Lots 3 and 4 as a ten acre parcel, and concluded that the aggregate fair market value of the Lots does not exceed the fair market value of five acre Lot 3 or Lot 4, if purchased separately. The applicant represents that the Lots are currently not encumbered by any debt, and that the Lots were never used by any related persons, and are not adjacent to other real property owned by Mr. Bryson or other parties in interest or related persons. Since original acquisition, the Lots have remained vacant and unutilized by any person, and have yielded no income to the Accounts.

5. Mr. Bryson now desires to purchase the Lots from the Accounts in a one time cash transaction for their current aggregate fair market value in order to build a personal residence. Once the transaction is consummated, the P/S Account will receive fifty five percent (55%) of the sale proceeds and the P/P Account will receive forty five percent (45%) of the sale proceeds. It is represented that the proposed transaction is in the best interest of the Accounts because the transaction will enable the Accounts to divest of a non-income producing asset which constitutes a relatively high percentage of the Accounts' assets, and will provide the Accounts with liquidity. The transaction is protective of the Accounts because as a result of the sale the Accounts will receive the current fair market value of the Lots, and the Accounts will incur no expenses as a result of the proposed transaction. The applicant maintains that a real estate broker has been attempting to sell the Lots since the summer of 1993, but the Accounts received no reasonable offers.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The Accounts will receive the current fair market value of the Lots established at the time of the sale by an independent qualified appraiser;

(c) The Accounts will pay no expenses associated with the sale; and

(d) The sale will enable the Accounts to diversify its investment portfolio and will provide the Accounts with liquidity.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana

[Application No. D–09890]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain improved real property (the Property) located in Evansville, Indiana, to WANC Leasing Company (WANC), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price of no less than the greater of (1) $8,555,000, or (2) the Property's fair market value as of the sale date; and

(C) The Plan does not incur any expenses with respect to the transaction.

Summary of Facts and Representations

Introduction: The Plan owns the Property, which is improved real property leased to and occupied by the Plan sponsor, Welborn Clinic (the Employer), as its principal place of business. The Employer requires substantial improvements of the Property to accommodate updated and modernized operations, but the Plan trustee has determined that it is not in the best interests of the Plan to finance such improvements. Instead, WANC (a partnership owned by principals of the Employer) proposes to purchase the Property from the Plan, complete the necessary improvements, and lease the Property to the Employer. The exemption proposed herein would enable the Plan's sale of the Property to WANC as described below.

1. The Plan is a defined contribution plan with 643 participants and total net assets of $55,721,511 as of December 31, 1993. The Employer is a multi-specialty group medical practice with its principal place of business situated in the Property, located at 421 Chestnut Street in the downtown sector of Evansville, Indiana. The Employer is an Indiana business trust which is controlled by the physicians who hold staff memberships with the Employer. The trustee of the Plan is the Citizens National Bank of Evansville (the Trustee), which represents itself to be independent of and unrelated to the Employer, except as Plan Trustee. WANC is an Indiana general partnership in which all of the 65 general partners are staff member physicians of the Employer.

2. The Property is owned by the Plan and leased to the Employer (the Employer Lease) pursuant to an individual administrative exemption, PTE 89–4 (54 FR 2241, January 19, 1989). The rights of the Plan with respect to the Property, including the Employer Lease and PTE 89–4, are represented for all purposes by the Trustee. The Property is a 4.437 acre

parcel of land located in downtown Evansville, Indiana, and is improved with a three-level, 99,500 square foot medical office building (the Main Building) which constitutes the main facility for the Employer's medical clinic (the Clinic). The entire Clinic consists of three components: (1) the Main Building, (2) a nearby medical facility building owned by WANC (the WANC Building) and leased to the Employer, and (3) a two-story structure (the Connector Building), owned by WANC and leased to the Employer, connecting the Main Building with the WANC Building. Pursuant to an additional administrative exemption, PTE 93–24 (58 FR 8991, February 18, 1993), the Employer Lease was modified in 1993 to enable an exchange of land parcels between the Plan and WANC in connection with WANC's construction of the Connector Building. As a result of the property exchange covered by PTE 93–24, the Plan acquired a parking lot (the New Parking Lot) adjacent to the Main Building, and WANC acquired a parcel of property abutting both the Main Building and the WANC Building, on which it constructed the Connector Building. The Connector Building and the land underlying it are owned by WANC, leased to the Employer, and utilized between the Main Building and the WANC Building as the main entrance and reception area for the Clinic. Only the Main Building is located on the Property owned by the Plan, which includes the New Parking Lot.

The Trustee represents that the Employer has complied with, and continues in compliance with, all terms and conditions of the Employer Lease and the individual exemptions, PTE 89–4 and PTE 93–24.

3. The Employer represents that with the aid of consultants, it has determined that the Main Clinic is in need of at least $3,000,000 of expansion and renovation work in order to satisfy the Employer's needs. As a result of WANC's 1993 construction of the Connector Building and a recent renovation of the WANC Building, those two components of the Clinic are new, updated medical facilities. However, the Employer represents that the Main Building remains in need of substantial refurbishing and refitting to provide updated, modernized workspace for surgery, urology, oncology, hematology, dermatology, allergy, ear/nose/throat, eyecare, the Employer's health maintenance organization, and administrative/business offices. The Trustee is unwilling to commit Plan assets to finance the necessary renovations of the Main Building because the Trustee considers such expenses to be the obligation of the Employer, and because the Trustee finds that the participants and beneficiaries would receive very little short-term or intermediate-term benefit from such additional investment of capital in the Clinic. The Employer, as tenant and occupant of the Main Building, is unwilling to bear the expense of the renovations because the improvements to the Main Building would eventually increase the Employer's rent under the Employer Lease, assuming such improvements would increase the Property's fair market value. The Employer represents that even if it were willing to finance renovations currently required, it is likely a similar problem would arise again in the future, whereby the Main Building would require renovations and the Trustee, on behalf of the Plan, and the Employer would each be unwilling to finance the improvements. The principals of WANC, however, have expressed a willingness to finance the necessary renovations of the Main Building pursuant to a proposed purchase of the Property from the Plan and its lease to the Employer.

4. Accordingly, the Trustee, the Employer and WANC propose that the Plan sell the Property to WANC, and are requesting an exemption for the sale transaction. The proposed sale transaction will proceed in accordance with a written agreement (the Agreement) executed between the Trustee, on behalf of the Plan, and WANC after the exemption proposed herein, if granted, is published in the **Federal Register**.

Under the Agreement, the Plan will sell the Property, consisting of the Main Building, the underlying land, and the New Parking Lot, for a cash purchase price of no less than $8,555,000 (the Minimum Purchase Price). In an appraisal of the Property effective June 24, 1994, Brian D. Shelton and William R Bartlett II, MAI, SRA (Shelton and Bartlett), determined that the fair market value of the Property, inclusive of the Employer Lease, was $8,250,000. Shelton and Bartlett are professional real estate appraisers with Appraisal Company, Inc. in Evansville, Indiana. In another appraisal of the Property, inclusive of the Property, C. David Matthews (Matthews) determined that the Property had a fair market value of $8,860,000 as of December 31, 1993. The Minimum Purchase Price represents the mean of the two appraisals. Pursuant to the Agreement, the Property will be reappraised by Matthews and Bartlett (the Reappraisals) no earlier than the date of the Agreement and no later than 30 days after the date of the Agreement. If the mean of the Reappraisals is higher than $8,555,000, then the purchase price of the Property shall be the mean of the Reappraisals. In no event will the purchase price be lower than the Minimum Purchase Price.

5. The Trustee represents that the agreement to set the purchase price for the Property at no less than the Minimum Purchase Price resulted from arm's-length negotiations between the Trustee and WANC over a two-month period. The Trustee initially proposed a sale of the Property to WANC for a purchase price of $8,860,000, consistent with Matthews' 1993 appraisal. The Trustee states that WANC considered this price to be excessive, in light of the more recent appraisal by Shelton and Bartlett, and WANC counter-proposed a purchase price of $8,250,000. The Trustee represents that the two appraisals were reviewed and analyzed by the Trustee's appraisal expert, Darrell Woehler (Woehler), who noted differences in the approach of the two appraisers and determined that substantial subjectivity could be expected among such appraisals. Woehler noted that Matthews had considered the current rent under the Employer Lease to be in excess of fair market rent, whereas Shelton and Bartlett had found the current rent to be equivalent to fair market rent. After Woehler's review, the Trustee continued discussions with representatives of WANC, until both parties agreed on the Minimum Purchase Price and the Reappraisals. The Trustee represents that the Plan's depreciated net cost basis of the Property was $3,751,070.42 as of December 31, 1993.

6. The Trustee represents that after careful consideration of all facts and circumstances surrounding the proposed sale of the Property to WANC, it has determined that it will be in the best interests and protective of the participants and beneficiaries of the Plan. The Trustee states that it has determined that the proposed purchase price of at least $8,555,000 is not less than the fair market value of the Property, and the Reappraisals ensure that the Plan will benefit from any increase in fair market value as of the date of the sale. The Trustee states that although the Plan has benefitted from favorable returns on the Property, it is time for the Plan to dispose of the Property and invest in other assets, in light of the pressing need for renovations and modernization of the Property's improvements.

The Trustee notes that due to the nature of the Property as a component

in a three-part medical facility, the other two parts of which are owned by WANC, it would be very difficult to find a buyer other than WANC willing to offer a purchase price as favorable to the Plan as that offered by WANC.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive a cash purchase price of no less than the Minimum Purchase Price, subject to possible upward adjustment pursuant to the Reappraisals, which the Trustee has determined to be no less than the fair market value of the Property; (2) The Plan will incur no costs or expenses relating to the transaction; (3) The Trustee has determined that retention of the Property would not be in the best interests of the Plan due to the necessity of renovation expenses; and (4) The Trustee has determined that the Plan is unlikely to secure an unrelated buyer willing to pay a purchase price for the Property as favorable to the Plan as the proposed purchase price under the Agreement.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration Department of Labor.

[FR Doc. 95–6118 Filed 3–10–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in Classics, the Renaissance and Early Modern Studies, submitted to the Division of Research Programs, for projects after September 1, 1995.

2. *Date:* April 10, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in History and American Studies, submitted to the Division of Research Programs, for projects beginning after September 1, 1995.

3. *Date:* April 12, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Subventions Program applications in Literature and Cultural Studies, submitted to the Division of Research Programs, for projects beginning after September 1, 1995.

4. *Date:* April 17–18, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives during the March 10, 1995 deadline, submitted to Division of Public Programs, for projects beginning after June 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–6144 Filed 3–10–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Call for Nominations for Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is inviting nominations of qualified candidates to consider for appointment to its Nuclear Safety Research Review Committee (NSRRC). Nominations will be accepted until April 20, 1995.

ADDRESSES: Submit nominations to: Ms. Jude Himmelberg, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. George Sege, Designated Federal Officer for the NSRRC, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–6593.

SUPPLEMENTARY INFORMATION: The Committee advises the Director of the NRC's Office of Nuclear Regulatory Research—and through him the Commission—on the quality and conduct or NRC research activities and makes recommendations concerning the overall management and direction of the nuclear safety research program.

The 12-member Committee is composed of senior experts in nuclear engineering or science capable of providing technical advice on the broad range of topics that are the subject of nuclear safety research for nuclear power plants and other facilities. Maintaining balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members. Committee members serve a two-year term and may be reappointed for up to two additional two-year terms.

Over the next two years, the Committee will be examining such issues as quality of nuclear safety research relative to the needs of the user of the research products, the long-range direction of the nuclear safety research programs, the peer review process of research products and the capability of individuals and facilities where nuclear safety research is conducted.

In order to maintain a good balance of capabilities on the Committee, candidates should have expertise in nuclear engineering and nuclear safety, with emphasis on demonstrated capabilities in the area of thermal-hydraulic performance of nuclear power reactor systems.

Selection for membership will be based on demonstrated capability and professional accomplishment in the indicated area of specialization, in the conduct or management of scientific or engineering research and in applying research to nuclear safety issues.

Nominations for membership must include a résumé describing the educational and professional qualifications of the nominee and the nominee's current address and daytime telephone number. Nominees must be U.S. citizens and be able to devote about 80 hours per year to Committee business.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–6060 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Millstone Nuclear Power Station, Unit No. 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would relax the setpoint tolerance for the pressurizer safety valves and the main steam safety valves from ±1% to ±3%.

The proposed action is in accordance with the licensee's application for amendment dated August 4, 1994.

The Need for the Proposed Action

The proposed action would revise the setpoint tolerance to assure both pressurizer safety valves and main steam safety valves remain within technical specification tolerances and reduce the potential for filing unnecessary Licensee Event Reports.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the relaxation of the setpoint tolerance for the pressurizer safety valves and the main steam safety valves from ±1% to ±3% is acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 4, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 28th day of February 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6063 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–10]

Northern States Power Co.; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from certain requirements of its regulations, to Northern States Power Company (NSP), located in Minneapolis, Minnesota. The requested exemption would allow NSP to submit the report of preoperational test acceptance criteria and test results at least three days (instead of 30 days) prior to the receipt of fuel at its independent spent fuel storage installation (ISFSI) at the Prairie Island plant (Docket Nos. 50–282/306) located near Red Wing, Minnesota.

Environmental Assessment

Identification of Proposed Action: The request, proposed by NSP letter dated January 4, 1995, would exempt NSP from the requirements of 10 CFR 72.82(e), which states that ''A report of the preoperational test acceptance criteria and test results must be submitted * * * at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.'' NSP proposed to submit this report three days prior to the receipt of spent fuel at its ISFSI. Granting the exemption at this time would enable NSP to proceed with activities to support its scheduled Unit 2 refueling outage.

The Need for the Proposed Action: NSP request for exemption is to ensure the availability of adequate storage space in the spent fuel pool in order to support NSP's scheduled Unit 2 refueling outage. A fuller discussion of the need for the exemption follows.

In July 1993, NSP suspended cask fabrication and site construction activities until the Minnesota State Legislature authorized the Prairie Island ISFSI on May 10, 1994. After authorization, the ISFSI construction resumed and the facility was completed in November 1994, and the first cask was received on January 26, 1995.

NSP plans to receive new fuel, in March 1995, for the refueling outage which is scheduled to begin May 13, 1995. Subsequent to receipt, new fuel is transferred from the new fuel storage racks into the spent fuel pool in preparation for refueling activities. Because the Prairie Island spent fuel pool is nearly full, and because there is limited space in the spent fuel pool area, the multiple activities, associated with storage cask loading and the refueling outage, cannot be conducted at the same time. Therefore, the first storage cask must be loaded and transported to the ISFSI prior to receipt of new fuel.

NSP estimates that approximately 30 days will be required for the preoperational testing of the first cask and the associated equipment, and about two weeks will be required to load the cask and transport it to the ISFSI. Including the 30-day waiting period required in 10 CFR 72.82(e), it will take about two and one-half months from cask receipt until it is placed on the storage pad. Even if cask loading started before the end of the waiting period (which is allowed under 10 CFR 72.82(e)— there would not be enough time to complete the activities prior to receipt of new fuel, assuming the full 30-day waiting period.

The purpose of the 30-day period, for the licensee to submit a report of the preoperational test acceptance criteria and test results, is to establish a sufficient hold point so as to ensure that the NRC has enough time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before fuel is received at an ISFSI. For example, an ISFSI located at an away-from-reactor site may not have a resident inspector; therefore, the full 30-day period might be necessary to provide enough time for the NRC to review the licensee's records and preoperational test results and, if needed, send inspectors to the site. The Prairie Island ISFSI is located on a reactor site that has resident inspectors, and the resident and other NRC inspectors will both be present at the ISFSI to observe portions of the preoperational testing activities while they are being conducted. The NRC inspectors will also have ongoing access to the licensee's test procedures and test results in order to be able to conduct the appropriate review. Thus, in view of the NRC's oversight presence during the preoperational testing phase at Prairie Island, as well as the NRC's immediate access to the licensee's procedures and test results, the Commission concludes that the full 30 days, provided for in the rule, will not be needed in order for NRC to complete its inspection activities and determine whether any further regulatory action is needed before spent fuel is received at the Prairie Island ISFSI. Therefore, the licensee's submission of the required report in less time than the required 30-day period, before fuel receipt at the ISFSI, is acceptable. However, based on the ongoing observations of preoperational tests by inspectors, NRC may determine that more time than the three-day period, requested by the licensee, is needed to review additional licensee records and preoperational test results. Therefore, in granting the requested exemption, NRC reserves the right to require additional time, if necessary, to complete its activities.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts of the proposed action. The NRC reviewed the Prairie Island Safety Analysis Report (SAR), and in July 1933, issued a Safety Evaluation Report (SER) approving the SAR. On July 28, 1992, the NRC issued an Environmental Assessment and Finding of no Significant Impact for the ISFSI (57 FR 34319, dated August 4, 1992). On the basis of these reviews NRC concluded that spent fuel could be stored in the ISFSI at Prairie Island without significant environmental impact.

The proposed exemption will not alter or affect the impacts of operation of the ISFSI previously evaluated by NRC. Rather, it merely allows NSP to submit the report of preoperational test acceptance criteria and test results three days prior to receipt of fuel at the ISFSI instead of the required 30-day period. As previously noted the 30-day period is to provide the NRC sufficient opportunity to review the licensee's submittals. With inspectors of site, a shorter period will, in this case, provide the same, sufficient opportunity. In addition, the proposed exemption does not involve any change that increases the probability or consequences of accidents, that changes the types of any effluents that may be released offsite, or that would significantly increase the allowable individual or cumulative occupational radiation exposure. The Commission accordingly concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts.

Alternative to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The staff considered the alternative of denying the requested exemption. Denial could result in the delay of the plant refueling outage planned for May 13, 1995, and would not reduce or change the environmental impacts that currently exist.

Agencies and Persons Consulted: The Commission's staff reviewed NSP's request and did not consult other agencies or persons.

Finding of No Significant Impact: Based upon the foregoing environmental

assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the request for exemption dated January 4, 1995, and other documents are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located in the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

Dated at Rockville, Maryland, this 6th day of March, 1995.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–6062 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket 70–364]

Babcock and Wilcox Co., Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 5, 1994, Citizens' Action for a Safe Environment (CASE) and the Kiski Valley Coalition to Save Our Children (The Coalition) (together referred to as Intervenors) filed a joint request for an informal hearing pursuant to 10 C.F.R. Part 2, Subpart L, with regard to Babcock & Wilcox Company's (Licensee) application for renewal of Special Nuclear Materials License SNM–414 issued to the Licensee by the Nuclear Regulatory Commission (Commission) for the Pennsylvania Nuclear Service Operation facility located in Parks Township, Armstrong County, Pennsylvania (Parks Township facility). In its Initial Decision, dated January 3, 1995, authorizing the renewal of the materials license, the Atomic Safety and Licensing Board, consistent with 10 C.F.R. 2.1205(k)(2), referred to the Commission's Executive Director for Operations for consideration as requests for action under 10 CFR 2.206, twelve areas of concern (see Sections B, H, I, M, P, Q, S, T, U, W, X, and Y, Initial Decision at pages 63 to 70) raised in that proceeding by the Intervenors. These concerns were referred to the Director of the Office of Nuclear Material Safety and Safeguards. Each of these concerns has been reviewed with respect to the requirements of 10 CFR 2.206. Sections B, H, I, M, P, S, T, U, W and Y have failed to satisfy the requirement of Section 2.206 that a request pursuant to section 2.206 must ''specify the action requested and set forth the facts that constitute the basis for the request.'' However, Section B, H, M, P, S, T, U, W, and Y were addressed by the Commission staff in Michael A. Lamastra's affidavit dated September 22, 1994, and Section I was addressed by the Commission staff in Heather M. Astwood's affidavit dated September 22, 1994, filed in the Parks Township proceeding.

Section Q has been interpreted as a request for the Commission to test for radioactive contamination in the general vicinity of Kepple Hill and Riverview in Parks Township. The apparent concern is that this area is downwind of the Apollo facility which the Intervenors assert had been releasing radioactivity at a rate above regulatory limits. The Intervenors rely on letters dated April 20, 1966, and May 26, 1969, concerning the need for experimental data for an air surveillance program at the Apollo plant and authorization by the Commission's predecessor, the Atomic Energy Commission, for the discharge of radioactive materials in concentrations exceeding 10 CFR Part 20 limits.

Section X has been interpreted as a request for the Commission to investigate radiological contamination on the Farmers Delight Dairy Farm (apparently located in Parks Township). The apparent concern is that past operations of the Parks Townships facility caused radioactive contamination of the farm. As basis for this request, Intervenors assert that there is information in a 1966 U.S. Department of Agriculture (USDA) study that indicates that the cattle on the farm were having thyroid problems and that radionuclides were show-up in the cow's milk.

As provided by Section 2.206, appropriate action will be taken on these two requests within a reasonable period of time.

A copy of the Petition and Initial Decision is available for inspection in the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–6065 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting and Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project (STP), Unit 1, located in Matagorda County, Texas.

The proposed amendment would modify the steam generator tube plugging criteria in Technical Specification 3/4.4.5, Steam Generators, and the allowable leakage for Unit 1 in Technical Specification 3/4.4.6.2, Operational Leakage, and the associated Bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Structural Considerations

Industry testing of model boiler and operating plant tube specimens for free span tubing at room temperature conditions shows typical burst pressures in excess of 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements at or below the structural limit of 4.0 volts. One model boiler specimen with a voltage amplitude of 19 volts also exhibited a burst pressure greater than 5000 psi. Burst testing performed on one intersection pulled

from STP Unit 1 with a 0.51 volt indication yielded a measured burst pressure of 8900 psi at room temperature. It is noted that the industry burst pressure tests do not reflect the effects of temperature and material properties in terms of the realized reduction in strength. However, even correcting for the effects of temperature on material properties (which represents about 80% of the strength at room temperature from ASME [American Society of Mechanical Engineers] Code Section III Appendix 1 values) yields effective burst pressures of about 4000 psi which is above the RG [Regulatory Guide] 1.121 limit of 3790 psi (1.43 times the MSLB [main steam line break] pressure differential) at 4.0 volts. The STP Unit 1 data point (0.51 volt) would yield an effective burst pressure of about 7100 psi, which is well above the 95% lower tolerance limit (LTL) prediction per the burst correlation data used. Additional benefit is realized during normal operation since the proximity of the TSP [tube support plate] will reinforce the tube, further reducing the likelihood of tube burst.

The projected end-of-cycle (EOC) voltage compares favorably with the 4 volt structural limit considering the EPRI [Electric Power Research Institute] voltage growth rate for indications at STP. Using the methodology of the NRC Draft Generic Letter 94–XX, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning-of-cycle (BOC) repair limit which should preclude EOC indications from growing in excess of the structural limit. The non-destructive examination (NDE) uncertainty to be applied per EPRI is approximately 21 percent. The EPRI recommended growth allowance of 35 percent/EFPY [effective full power years] is also applied. This growth value is conservative for STP Unit 1 based on previous inspection history. By adding NDE uncertainty allowances and a crack growth allowance to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 4 volts can be represented as:

$$RL + (0.20 \times RL) + (0.53^{*} \times RL) = 4 \text{ volts,}$$

which yields RL of 2.3 volts.

*The 35% growth rate for 1 EFPY was scaled up to the cycle length used at South Texas.

This repair limit (2.3 volts) reasonably could be applied for APC [alternate plugging criteria] implementation to repair bobbin indications greater than the 1.0 volt criterion specified by NRC Generic Letter 94–XX and is independent of RPC [rotating pancake coil] confirmation of the indications. Houston Lighting & Power has chosen to use a steam generator tube upper repair limit of 2.3 volts to assess tube integrity for those bobbin indications which are above 1.0 volt but do not have confirming RPC calls. This 2.3 volt upper limit for non-confirmed RPC calls is consistent with the NRC Generic Letter 94–XX which establishes 2.7 volts as the upper limit for 3/4 tubing. Since the upper bound for repair of non-confirmed RPC is limited to a value far less than the structural limit associated with full alternate criteria, the establishment of the repair limits are determined to be reasonable and conservative with respect to the industry pulled tube data base used.

Leakage Considerations

As part of the implementation of APC, the distribution of EOC cracking indications at the TSP intersections has been used to calculate the primary to secondary leakage which is bounded by the maximum leakage required to remain within applicable dose limits (10 CFR 100, NUREG–0800 and GDC [General Design Criterion] 19). This limit was calculated using the Technical Specification RCS [reactor coolant system] Iodine–131 transient spiking values consistent with NUREG–0800. Applications of the APC criteria requires the projection of postulated MSLB leakage based on the projected EOC voltage distribution for the beginning of the cycle. Projected EOC voltage distribution is developed using the most recent EOC eddy current results and a voltage measurement uncertainty. Draft NUREG–1477 requires that all indications to which APC is applied must be included in the leakage projection.

The projected MSLB leakage rate calculation methodology prescribed in EPRI TR–100407 will be used to calculate the EOC leakage. A Monte Carlo approach will be used to determine the EOC leakage, accounting for all of the ECT [eddy current testing] uncertainties, voltage growth, and an assumed probability of detection (POD) of 0.6 for a 1.0 volt repair limit. The fitted logarithmic function probability of leakage correlation will be used to establish the STP MSLB leak rate used for comparison with a bounding allowable leak rate in the faulted loop which would result in radiological consequences which are within applicable dose limits. Due to the relatively low voltage levels of indications at STP and low voltage growth rates, it is expected that the actual calculated leakage values will be far less than this limit. Currently, the leakage projected for EOC–05 at STP Unit 1 is 0.02 gpm [gallons per minute] (<21 gpd [gallons per day]) which is negligible in comparison to the allowable limit.

Therefore, implementation of APC does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable does consequences. The proposed amendment does not result in any increase in the probability of consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube alternate plugging criteria for ODSCC [outer diameter stress corrosion cracking] at the TSP intersections does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the TSP elevations since no ODSCC has been identified outside the thickness of the TSPs. It is therefore expected that for all plant conditions, neither a single nor multiple tube rupture event would occur in a steam generator where APC has been applied.

Specifically, Houston Lighting & Power will implement, for Unit 1, a maximum leakage rate of 150 gpd per steam generator (SG) to help preclude the potential for excessive leakage during all plant conditions. The current technical specification limits on primary-to-secondary leakage at operating conditions are 1 gpm for all steam generators or 500 gpd for any one SG. The RG 1.121 criterion for establishing operational leakage rate limits governing plant shutdown be based [*sic*] upon leak-before-break (LBB) considerations to detect a free span crack before potential tube rupture as a result of faulted plant conditions. The 150 gpd limit is intended to provide for leakage detection and plant shutdown in the event of an unexpected crack propagation resulting in excessive leakage. RG 1.121 acceptance criteria for establishing operating leakage limits are based on LBB considerations such that plant shutdown is initiated if the permissible crack is exceeded.

The predicted EOC leakage for STP is based on a 35% growth rate and does not take credit for the TSP proximity during normal operation. The total current projected leakage for EOC 05 is 20.5 gpd for the limiting SG (C) at STP Unit 1 which is considerably less than the 150 gpd limit. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during the secondary side blowdown of a MSLB. Typically, it is expected for the vast majority of intersections that only partial uncovery will occur. Thus, the proximity of the TSP will enhance the burst capacity of the tube.

Steam generator tube integrity is continually maintained through inservice inspection and primary-to-secondary leakage monitoring. Any tubes falling outside the APC repair limits are removed from service. Therefore, the possibility of a new or different kind of accident from any accident previously developed is not created.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage based bobbin probe for dispositioning ODSCC degraded tubes within TSP intersections by APC is demonstrated to maintain steam generator tube integrity in accordance with the requirements of RG 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking are removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevation is not expected to leak to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of loss of coolant accident (LOCA) and safe

shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case at STP as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA [loss of coolant accident] rarefaction wave and SSE loadings. The resulting secondary-to-primary pressure differential on the deformed tubes may cause some of the tube to collapse.

There are two concerns associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction on flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that through wall cracks in tubes could sufficiently enlarge during tube deformation or collapse, causing sufficient in-leakage of secondary water back to the core which dilutes the poisoning effect of boron injection from the emergency cooling system. Again, an increase in core PCT may result.

Consequently, since the LBB methodology is applicable to the STP reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator, RHR [residual heat removal], or the pressurizer surge line break. The analysis identifies tube located adjacent to wedge regions that are subject to potential collapse during combined LOCA and SSE. These tubes will be excluded from application of APC. Thus, existing tube integrity requirements apply to these tubes and the margin of safety is not reduced.

Implementation practices using the bobbin probe voltage based tube plugging criteria bounds RG 1.83 considerations by:

(1) Using enhanced eddy current inspection guidelines consistent with those used by EPRI in developing the correlations. This provides consistency in voltage normalization,

(2) Performing a 100 percent bobbin coil inspection for all hot leg tube support plate intersections and all cold leg intersections down to the lowest cold leg tube support plate with outer diameter stress corrosion cracking (ODSCC) indications. The determination of the tube support plate intersections having ODSCC indications shall be based on the performance of at least a 20% random sampling of tubes inspected over their full length, and

(3) Incorporating RPC inspection for all tubes with larger indications left inservice. This further establishes the principal degradation morphology as ODSCC.

Implementation of APC at TSP intersections will decrease the number of tubes which must be repaired. Since the installation of tube plugs (to remove ODSCC degraded tubes from service) reduces the RCS flow margin, APC implementation will help preserve the margin of flow that would otherwise be reduced.

The projected EOC primary-to-secondary leakage rate allowed is bounded by a leak rate which limits the radiological consequences of a EOC MSLB to within applicable dose limits. Therefore, this change does not involve a significant reduction in the margin to safety.

It is therefore concluded that the proposed license amendment request does not result in a significant reduction in the margin of safety as defined in the plant Final Safety Analysis Report or Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, Washington, DC.

The filing of requests for hearing for petitions for leave to intervene is discussed below.

By April 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall be set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene

which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is award and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6067 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting and Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project (STP), Unit 1, located in Matagorda County, Texas.

The proposed amendment would change Technical Specification 3/4.4.5, Steam Generators, and the associated Bases to allow the use of an alternate plugging criteria (known in the industry as F *) on steam generator tubes that are defective or degraded within certain areas within the tubesheet.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Steam Generator section of Technical Specifications do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident. The requirements approved by the NRC will not be reduced by this request. Since F* utilizes the ''as rolled'' tube configuration that exists as part of the original steam generator design, all of the design and operating characteristics of the steam generator and connected systems are preserved. The F* joint has been analyzed and tested for design, operating and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. At worst case, a tube leak would occur with the result being a primary to secondary leak.

Should a tube leak occur, the impact is bounded by the ruptured tube evaluation submitted by HL&P [Houston Lighting & Power] for the STP Unit 1 operating license. No new or unreviewed accident conditions are created by the use of F* criteria. The potential for a tube rupture is not increased from the original submittal, thus there is no impact on accidents evaluated as the design

basis. Therefore use of the F* criteria will not increase the probability of occurrence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the proposed F* alternate plugging criteria will not introduce significant or adverse changes to the plant design basis. The failure of a tube which remained unplugged in accordance with the F* criteria would result in a tube leak, which is a previously analyzed condition. Since this leak would occur below the secondary face of the tubesheet, its leak rate would be limited by the tube-to-tubesheet interface. Qualification testing and previous experience indicates that normal and faulted leakage would be well below the technical specification limits creating no threat associated with tube rupture type leakages. This conclusion is consistent with previous F* programs approved and used at other operating plants.

However, in the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore, preventing any interaction with neighboring tubes. If the tube severs at a point above the F* region, then it is covered by the tube rupture event as a part of the UFSAR [updated final safety analysis report]. Thus, the possibility of a new or different type of accident from any accident previously evaluated is not credited.

3. The proposed change does not involve a significant reduction in a margin of safety.

Based on previous responses (above), the protective boundaries of the steam generator are preserved. A tube with degradation can be kept in service through F* criteria which provided an un-degraded expanded interface with the tubesheet and which satisfies all of the necessary structural and leakage requirements per Reg. Guide 1.121 and the Technical Specifications. Since the joint is constrained within the tubesheet bore there is no additional risk associated with tube rupture. Since the UFSAR analyzed accident scenarios remain bounding the use of an F* criteria does not reduce the margin of safety.

Thus, these changes do not involve a significant reduction in the margin of safety. Therefore, based on the above evaluation, Houston Lighting & Power has concluded that these changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if

proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

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[Docket No. 50–220]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit No. 1; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by the Niagara Mohawk Power Corporation (NMPC) to withdraw a portion of their July 21, 1994, application, for a proposed amendment to Facility Operating License DPR–63 for the Nine Mile Point Nuclear Station Unit No. 1, located in Oswego County, New York.

The proposed amendment would have revised Technical Specifications (TSs) 2.1.2 (Fuel Cladding Integrity), 3.1.7 (Fuel Rods), 3.6.2/4.6.2 (Protective Instrumentation), and the associated Bases to allow the use of Range 10 on the Intermediate Range Neutron Flux Monitors (IRMs) with the Reactor Protection System low pressure trip for main steam line isolation valve closure not in bypass. Changes were also proposed to TS Tables 3.6.2.a/4.6.2a (Instrumentation that Initiates Scram) and TS Tables 3.6.2g/4.6.2g (Instrumentation that Initiates Control Rod Withdrawal Block) to extend the calibration frequency of the Source Range Neutron Flux Monitors (SRMs) and the IRMs from prior to startup and shutdown to once per operating cycle. The proposed change would have also changed the Instrument Channel Test interval for the SRMs and IRMs from prior to startup and shutdown to once per week. Associated changes to TSs Setpoints, Bases, References, and Notes for TSs 2.1.2, 3.1.7, and 3.6.2/4.6.2 were also proposed.

By letter dated February 1, 1995, NMPC requested to withdraw that portion of the proposed amendment associated with the extension of the calibration frequency for the SRMs and IRMs.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the **Federal Register** on August 31, 1994 (59 FR 45028).

For further details with respect to this action, see the application for amendment dated July 21, 1994, as supplemented on December 5, 1994, December 14, 1994, and January 11, 1995, and the licensee's letter dated February 1, 1995, which withdrew the portion of the application for license amendment associated with the extension of the calibration frequency for the SRMs and IRMs. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 3rd day of March 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6064 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., Wisconsin Power and Light Co. Madison Gas and Electric Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company, (the licensee) to withdraw its application dated April 21, 1994, for a proposed amendment to Facility Operating License No. DPR–43

for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have modified the facility technical specifications by adding requirements for the steam exclusion system.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 3, 1994 (59 FR 39600). However, by letter dated February 27, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 21, 1994, and the licensee's letter dated February 27, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 53401.

Dated at Rockville, Maryland, this 7th day of March 1995.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorage III–3, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 95–6066 Filed 3–10–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management

Notice of Proposed Revisions to OMB Circular No. A–123, ''Management Accountability and Control''

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Proposed Revisions to OMB Circular No. A–123.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to OMB Circular No. A–123, ''Management Accountability and Control.''

FOR FURTHER INFORMATION CONTACT: Cindy Salavantis, OMB, Office of Federal Financial Management, (202) 395–6911.

Dated: March 7, 1995.

John B. Arthur,

Associate Director for Administration.

Attachment

Management Accountability and Control

AGENCY: Office of Management and Budget.

ACTION: Proposed Revisions to OMB Circular No. A–123.

SUMMARY: This Notice offers interested parties an opportunity to comment on proposed revisions to Office of Management and Budget (OMB) Circular No. A–123, ''Management Accountability and Control.'' The Circular, which was previously titled ''Internal Control Systems,'' implements the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

Also, this action seeks comments on a proposal to streamline agency FMFIA reporting, which has not yet been incorporated into this proposed revision to Circular No. A–123. OMB is permitted by the Government Management Reform Act (GMRA) of 1994 (P.L. 103–356) to consult with the Congress on modifications to current reporting requirements. A possible modification affecting FMFIA reporting is under consideration (see Supplementary Information below for further details).

DATES: All comments on this proposal should be in writing, and must be received by April 12, 1995. Late comments will be considered only to the extent practicable. When comments are sent in by facsimile, they should be followed up with an original printed copy.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503. For a copy of the current Circular, contact Office of Administration, Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Cindy Salavantis, Office of Federal Financial Management, Management Integrity Branch, telephone (202) 395–6911 and fax (202) 395–3952.

SUPPLEMENTARY INFORMATION: The proposed revision alters current requirements for executive agencies on evaluating management controls, consistent with recommendations made by the National Performance Review. The proposed revision integrates many of the current policy issuances on management control into a single document, and provides a framework for integrating management control assessments with other work now being performed by agency managers, auditors and evaluators.

The proposed revision emphasizes that management controls should benefit rather than encumber management, and should make sense for each agency's operating structure and environment. By giving agencies the discretion to determine which tools to use in arriving at the annual assurance statement to the President and the Congress, the Circular represents an important step towards a streamlined management control program that incorporates the reinvention principles of this Administration.

The proposed revision is presented in five sections:

Section I. Introduction. This section describes a framework for agency management control programs. Particular attention is directed to the integration of agency management control activities with other management requirements and policies, such as the Government Performance and Results Act, the Chief Financial Officers (CFOs) Act, the Inspector General Act, and other congressional and Executive Branch requirements. The foundation of this proposed policy is that management control activities are not stand alone management practices, but rather are woven into the day-to-day operational responsibilities of agency managers.

Agencies are encouraged to plan for how the requirements of the Circular will be implemented. Agencies are also encouraged to establish senior level management councils to address management accountability and related issues within the broad context of agency operations.

Section II. Establishing Management Controls. This section defines management controls, and requires agency managers to develop and implement appropriate management controls. Included in this section are general and specific management control standards, drawn in large part from the standards issued by the General Accounting Office.

By including these standards in this proposed revision, OMB is continuing its efforts to integrate various management control policies into a single document. It is anticipated that this effort will make it easier for Federal managers to implement good management controls.

Section III. Assessing and Improving Management Controls. This section states that agency managers should continuously monitor and improve the effectiveness of management controls. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual

assessment of and report on management controls.

Agencies are encouraged to use a variety of information sources to arrive at the annual assurance statement to the President and the Congress. Several examples of sources of information are included in this section.

Agency managers and the agency's senior management council will consider and make recommendations to the agency head regarding the annual assurance statement required by FMFIA, and which deficiencies in management controls should be considered material and included in the agency head's FMFIA Report.

Section IV. Correcting Management Control Deficiencies. This section states that agency management is responsible for taking timely and effective action to correct management control deficiencies. Correcting these deficiencies is an integral part of management's responsibilities and must be considered a priority by the agency.

Section V. Reporting on Management Controls. This section describes the required components of the agency's annual FMFIA report and the suggested report distribution to the President and the Congress.

Periodically, questions are raised as to FMFIA coverage by government corporations. This section presents FMFIA requirements as they pertain to government corporations pursuant to the CFOs Act. 31 U.S.C. 9106.

Finally, as noted in the Summary above, this Notice also seeks input on a proposal to streamline agency FMFIA reporting, which has not yet been incorporated into this proposed revision to Circular No. A–123. Respondents are encouraged to comment on a possible modification affecting FMFIA reporting which has been proposed by the CFO Council.

Under this proposal, agencies would consolidate FMFIA information with other performance-related reporting into a broader ''Accountability Report'' to be issued annually by the agency head. This report would be issued as soon as possible after the end of the fiscal year, but no later than March 31 for agencies producing audited financial statements and December 31 for all other agencies. The other components of the proposed ''Accountability Report'' include: audited financial statements; agency management's followup on audit recommendations; financial reporting data on prompt payment and civil monetary penalties; and available information on agency performance compared to its stated goals and objectives, in preparation for implementation of the Government Performance and Results Act. While financial data would be reported for the fiscal year just ended, the most current information available at the time the report is issued would be included on management controls and audit followup issues.

John B. Arthur,

Associate Director for Administration.

To the Heads of Executive Departments and Establishments

Subject: Management Accountability and Control

1. *Purpose and Authority.* As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls.

The Circular is issued under the authority of the Federal Managers' Financial Integrity Act of 1982 as codified in 31 U.S.C. 3512.

The Circular replaces Circular No. A–123, ''Internal Control Systems,'' revised, dated August 4, 1986, and OMB's 1982 ''Internal Controls Guidelines'' and associated ''Questions and Answers'' document, which are hereby rescinded.

2. *Policy.* Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable information is obtained, maintained, reported and used for decision making.

3. *Actions Required.* Agencies and individual Federal managers must take systematic and proactive measures to (i) develop and implement appropriate, cost-effective management controls for results-oriented management; (ii) assess the adequacy of management controls in Federal programs and operations; (iii) identify needed improvements; and (iv) take corresponding corrective action.

4. *Effective Date.* This Circular is effective upon issuance.

5. *Inquiries.* Further information concerning this Circular may be obtained from the Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, 202/395–6911.

6. *Copies.* Copies of this Circular may be obtained by telephoning the Executive Office of the President, Publication Services, at 202/395–7332.

[to be signed by Director, OMB]

Attachment

I. Introduction

The proper stewardship of Federal resources is a fundamental responsibility of agency managers and staff. Federal employees must ensure that government resources are used efficiently and effectively to achieve intended program results. Resources must be used consistent with agency mission, in compliance with law and regulation, and with minimal potential for waste, fraud, and mismanagement.

To support results-oriented management, the Government Performance and Results Act (GPRA, P.L. 103–62) requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals. As the Federal government implements this legislation, these plans and goals should be integrated into (i) the budget process, (ii) the operational management of agencies and programs, and (iii) accountability reporting to the public on performance results, and on the integrity, efficiency, and effectiveness with which they are achieved.

Management controls—organization, policies, and procedures—are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA).

Framework. The importance of management controls is addressed, both explicitly and implicitly, in many statutes and executive documents. The Federal Managers' Financial Integrity Act (P.L. 97–255) establishes specific expectations with regard to management controls. The agency head must establish controls that reasonably ensure that: (i) obligations and costs comply with applicable law; (ii) assets are safeguarded against waste, loss,

unauthorized use or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted for. 31 U.S.C. 3512 (c)(1). In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs. 31 U.S.C. 3512 (d)(2). The Act encompasses program and administrative areas as well as accounting and financial management.

Instead of considering controls as an isolated management tool, agencies should integrate their efforts to meet the requirements of FMFIA with other efforts to improve effectiveness and accountability. Thus, management controls should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. They should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

For example, good management controls can assure that performance measures are complete and accurate. The management control standard of organization would align staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability. Similarly, accountability for resources could be improved by more closely aligning budget accounts with programs and charging them with all significant resources used to produce the program's outputs and outcomes.

Meeting the requirements of the Chief Financial Officers Act (P.L. 101–576, as amended) should help agencies both establish and evaluate management controls. The Act requires the preparation and audit of financial statements for 23 Federal agencies. In this process, auditors report on internal controls and compliance with laws and regulations. Therefore, the agencies covered by the Act have a clear opportunity both to improve controls over their financial activities, and to evaluate the controls that are in place.

The Inspector General Act (P.L. 95–452, as amended) provides for independent reviews of agency programs and operations. Offices of Inspectors General (OIGs) and other external audit organizations frequently cite specific deficiencies in management controls and recommend opportunities for improvements. Agency managers, who are required by the Act to follow up on audit recommendations, should use these reviews to identify and correct problems resulting from inadequate, excessive, or poorly designed controls, and to build appropriate controls into new programs.

Federal managers must carefully consider the appropriate balance of controls in their programs and operations. Fulfilling requirements to eliminate regulations (''Elimination of One-Half of Executive Branch Internal Regulations,'' Executive Order 12861) and streamline staffing (the Federal Workforce Restructuring Act of 1994, P.L. 103–226), should reinforce to agency managers that too many controls can result in inefficient and ineffective government, and therefore that they must ensure an appropriate balance between too many controls and too few controls. Managers should benefit from controls, not be encumbered by them.

Agency Implementation. Appropriate management controls should be integrated into each system established by agency management to direct and guide its operations. A separate management control process need not be instituted, particularly if its sole purpose is to satisfy the FMFIA's reporting requirements.

Agencies need to plan for how the requirements of this Circular will be implemented. Developing a written strategy for internal agency use may help ensure that appropriate action is taken throughout the year to meet the objectives of the FMFIA. The absence of such a strategy may itself be a serious management control deficiency.

Identifying and implementing the specific procedures necessary to ensure good management controls, and determining how to evaluate the effectiveness of those controls, is left to the discretion of the agency head. However, agencies are encouraged to streamline their management control efforts in accordance with the recommendations of the National Performance Review.

The President's Management Council, composed of the major agencies' chief operating officers, has been established to foster governmentwide management and cultural changes (''Implementing Management Reform in the Executive Branch,'' October 1, 1993). Many agencies are establishing their own senior management council, often chaired by the agency's chief operating officer, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of management controls; recommending to the agency head which control deficiencies are sufficiently serious to report in the annual FMFIA report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section III of this Circular.)

II. Establishing Management Controls

Definition of Management Controls. Management controls are the organization, policies, and procedures used by agencies to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable information is obtained, maintained, reported and used for decision making.

Management controls, in the broadest sense, include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include processes for planning, organizing, directing, and controlling program operations. A subset of management controls are the internal controls used to assure that there is prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets that could have a material effect on its financial statements.

Developing Management Controls. As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results. As part of this process, agencies and individual Federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls. Such controls guarantee neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but they are a means of managing the risk associated with Federal programs and operations. To help ensure that controls are appropriate and cost-effective, agencies should consider the extent and cost of controls relative to the importance and risk associated with a given program.

Standards. Agency managers should incorporate basic management controls in the strategies, plans, guidance and procedures that govern their programs and operations. Controls should be consistent with the following standards, which are drawn in large part from the ''Standards for Internal Control in the Federal Government,'' issued by the General Accounting Office (GAO).

General management control standards are:

- Compliance With Law. All program operations, obligations and costs must comply with applicable law. Resources

should be efficiently and effectively allocated for duly authorized purposes.

• Reasonable Assurance and Safeguards. Management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. Management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.

• Integrity, Competence, and Attitude. Managers and employees must have personal integrity and are obligated to support the ethics programs in their agencies. The spirit of the Standards of Ethical Conduct requires that they develop and implement effective management controls and maintain a level of competence that allows them to accomplish their assigned duties. Effective communication within and between offices should be encouraged.

Specific management control standards are:

• Delegation of Authority and Organization. Managers should ensure that appropriate authority, responsibility and accountability are delegated to accomplish the mission of the organization, and that an appropriate organizational structure is established to effectively carry out program responsibilities. To the extent possible, controls and related decision-making authority should be in the hands of line managers and staff.

• Separation of Duties and Supervision. Key duties and responsibilities in authorizing, processing, recording, and reviewing official agency transactions should be separated among individuals. Managers should exercise appropriate oversight to ensure individuals do not exceed or abuse their assigned authorities.

• Access to and Accountability for Resources. Access to resources and records should be limited to authorized individuals, and accountability for the custody and use of resources should be assigned and maintained.

• Recording and Documentation. Transactions should be promptly recorded, properly classified and accounted for in order to prepare timely accounts and reliable financial and other reports. The documentation for transactions, management controls, and other significant events must be clear and readily available for examination.

• Resolution of Audit Findings and Other Deficiencies. Managers should promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations. Managers should complete, within established timeframes, all actions that correct or otherwise resolve the appropriate matters brought to management's attention.

Other policy documents may describe additional specific standards for particular functional or program activities. For example, OMB Circular No. A–127, ''Financial Management Systems,'' describes government-wide requirements for financial systems. The Federal Acquisition Regulations define requirements for agency procurement activities.

III. Assessing and Improving Management Controls

Agency managers should continuously monitor and improve the effectiveness of management controls associated with their programs. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls, as required by the FMFIA. Agency management should determine the appropriate level of documentation needed to support this assessment.

Sources of Information. The agency head's assessment of management controls can be performed using a variety of information sources. Management has primary responsibility for monitoring and assessing controls, and should use other sources as a supplement to—not a replacement for—its own judgment. Sources of information include:

• Management knowledge gained from the daily operation of agency programs and systems.

• Management reviews conducted (i) expressly for the purpose of assessing management controls, or (ii) for other purposes with an assessment of management controls as a by-product of the review.

• IG and GAO reports, including audits, inspections, reviews, investigations, outcome of hotline complaints, or other products.

• Program evaluations.

• Audits of financial statements conducted pursuant to the Chief Financial Officers Act, as amended, including: information revealed in preparing the financial statements; the auditor's reports on the financial statements, internal controls, and compliance with laws and regulations; and any other materials prepared relating to the statements.

• Reviews of financial systems which consider whether the requirements of OMB Circular No. A–127 are being met.

• Reviews of systems and applications conducted pursuant to the Computer Security Act of 1987 and OMB Circular No. A–130, ''Management of Federal Information Resources.''

• Annual performance plans and reports pursuant to the Government Performance and Results Act.

• Reports and other information provided by the Congressional committees of jurisdiction.

• Other reviews or reports relating to agency operations, e.g. for the Department of Health and Human Services, quality control reviews of the Medicaid and Aid to Families with Dependent Children programs.

Use of a source of information should take into consideration whether the process included an evaluation of management controls. Agency management should avoid duplicating reviews which assess management controls, and should coordinate their efforts with other evaluations to the extent practicable.

If a Federal manager determines that there is insufficient information available upon which to base an assessment of management controls, then appropriate reviews should be conducted which will provide such a basis.

Identification of Deficiencies. Agency managers and employees should identify deficiencies in management controls from the sources of information described above. A deficiency should be reported if it is or should be of interest to the next level of management. Agency employees and managers generally report deficiencies to the next supervisory level, which allows the chain of command structure to determine the relative importance of each deficiency.

A deficiency that the agency head determines to be significant enough to be reported outside the agency (i.e. included in the annual FMFIA report to the President and the Congress) should be considered a ''material weakness.'' This designation requires a judgment by agency managers as to the relative risk and significance of deficiencies. Agencies may wish to use a different term to describe less significant deficiencies, which are reported only internally in an agency. In identifying and assessing the relative importance of deficiencies, particular attention should be paid to the views of the agency's IG.

Agencies should carefully consider whether systemic problems exist that adversely affect management controls across organizational or program lines. The Chief Financial Officer, the Senior Procurement Executive, the Senior IRM Official, and the managers of other

functional offices should be involved in identifying and ensuring correction of systemic deficiencies relating to their respective functions.

Agency managers and staff should be encouraged to identify and report deficiencies, as this reflects positively on the agency's commitment to recognizing and addressing management problems. Failing to report a known deficiency would reflect adversely on the agency.

Role of Senior Management Council. Many agencies have found that a senior management council is a useful forum for assessing and monitoring deficiencies in management controls. The membership of such councils generally includes both line and staff management; consideration should be given to involving the IG. Such councils generally recommend to the agency head which deficiencies are deemed to be material to the agency as a whole, and should therefore be included in the annual FMFIA report to the President and the Congress. (Such a council need not be exclusively devoted to management control issues.) This process will help identify deficiencies that although minor individually, may constitute a material weakness in the aggregate. Such a council may also be useful in determining when sufficient action has been taken to declare that a deficiency has been corrected.

IV. Correcting Management Control Deficiencies

Agency managers are responsible for taking timely and effective action to correct deficiencies identified by the variety of sources discussed in Section III. Correcting deficiencies is an integral part of management accountability and must be considered a priority by the agency.

The extent to which corrective actions are tracked by the agency should be commensurate with the severity of the deficiency. Corrective action plans should be developed for all material weaknesses, and progress against plans should be periodically assessed and reported to agency management. Management should track progress to ensure timely and effective results. For deficiencies that are not included in the FMFIA report, corrective action plans should be developed and tracked internally at the appropriate level.

A determination that a deficiency has been corrected should be made only when sufficient corrective actions have been taken and the desired results achieved. This determination should be in writing, and along with other appropriate documentation, should be available for review by appropriate officials. (See also role of senior management council in Section III.)

As managers consider IG and GAO audit reports in identifying and correcting management control deficiencies, they must be mindful of the statutory requirements for audit followup included in the IG Act, as amended. Under this law, management has a responsibility to complete action, in a timely manner, on audit recommendations on which agreement with the IG has been reached. 5 U.S.C. Appendix 3. (Management must make a decision regarding IG audit recommendations within a six month period and implementation of management's decision should be completed within one year to the extent practicable.) Agency managers and the IG share responsibility for ensuring that IG Act requirements are met.

V. Reporting on Management Controls

Reporting Pursuant to Section 2. 31 U.S.C. 3512(d)(2) (commonly referred to as Section 2 of the FMFIA) requires that annually by December 31, the head of each executive agency submit to the President and the Congress (i) a statement on whether there is reasonable assurance that the agency's controls are achieving their intended objectives; and (ii) a report on material weaknesses in the agency's controls. OMB may provide guidance on the composition of the annual report.

- *Statement of Assurance.* The statement on reasonable assurance represents the agency head's informed judgment as to the overall adequacy and effectiveness of management controls within the agency. The statement must take one of the following forms: statement of assurance; qualified statement of assurance, considering the exceptions explicitly noted; or statement of no assurance.

In deciding on the type of assurance to provide, the agency head should consider information from the sources described in Section III of this Circular, with input from senior program and administrative officials and the IG. The agency head must describe the analytical basis for the type of assurance being provided, and the extent to which agency activities were assessed. The statement of assurance must be signed by the agency head.

- *Report on Material Weaknesses.* The FMFIA report should include agency plans to correct the material weaknesses and progress against those plans.

Reporting Pursuant to Section 4. 31 U.S.C. 3512 (d)(2)(B) (commonly referred to as Section 4 of the FMFIA) requires an annual statement on whether the agency's financial management systems conform with government-wide requirements. These financial systems requirements are presented in OMB Circular No. A–127, ''Financial Management Systems,'' section 7. If the agency does not conform with financial systems requirements, the statement should discuss the agency's plans for bringing its systems into compliance.

If the agency head judges a deficiency in financial management systems and/or operations to be material when weighed against other agency deficiencies, the issue should be included in the annual FMFIA report in the same manner as other material weaknesses.

Distribution of FMFIA Report. The assurance statements and information related to both Sections 2 and 4 should be provided in a single FMFIA report. Copies of the report should be transmitted to the President; the Director of OMB; the President of the Senate; the Speaker of the House of Representatives; and the Chairpersons and Ranking Members of the Senate Committee on Governmental Affairs, the House Committee on Government Operations, and the relevant authorizing and appropriations committees and subcommittees. In addition, 10 copies of the report should be provided to OMB's Management Integrity Branch.

Government Corporations. Section 306 of the Chief Financial Officers Act established a reporting requirement related to management controls for corporations covered by the Government Corporation and Control Act. 31 U.S.C. 9106. These corporations must submit an annual management report to the Congress not later than 180 days after the end of the corporation's fiscal year. This report must include, among other items, a statement on control systems by the head of the management of the corporation consistent with the requirements of the FMFIA.

The corporation is required to provide the President, the Director of OMB, and the Comptroller General a copy of the management report when it is submitted to Congress.

[FR Doc. 95–6024 Filed 3–10–95; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on December 28, 1994 (59 FR 66980). Individual authorities established or revoked under Schedules A and B and established under Schedule C between December 1, 1994, and January 31, 1995, appear in the listing below. Also appearing below is a Schedule A authority that was revoked effective September 1, 1994. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked between December 1, 1994, and January 31, 1995.

The following exception was revoked:

Department of the Interior

National Park Service. Temporary intermittent and seasonal Park Ranger and support positions with employment up to 180 working days a year. Revoked effective September 1, 1994. These positions are now a part of the competitive service.

Schedule B

No Schedule B authorities were established or revoked between December 1, 1994, and January 31, 1995.

Schedule C

Administrative Conference of the United States

Special Assistant to the Chairman, Administrative Conference of the United States. Effective December 14, 1994.

Commission on Civil Rights

Special Assistant to the Staff Director, Office of the Staff Director. Effective January 24, 1995.

Deputy General Counsel to the General Counsel, Office of the General Counsel. Effective January 24, 1995.

Corporation for National and Community Service

Director, Higher Education and Youth Communication to the Director, Public Affairs. Effective December 19, 1994.

Director of Constituency Relations to the Director of Public Liaison. Effective December 19, 1994.

Deputy Director to the Director, Domestic Volunteer Service Programs. Effective December 19, 1994.

Public Affairs Officer to the Chief External Affairs Officer. Effective January 25, 1995.

Department of Agriculture

Deputy Director, Special Projects to the Director, Office of Communications. Effective December 2, 1994.

Special Assistant to the Director, Office of Public Affairs. Effective December 13, 1994.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective December 13, 1994.

Confidential Assistant to the Assistant Secretary for Science and Education. Effective January 12, 1995.

Special Assistant to the Deputy Assistant Secretary. Effective January 17, 1995.

Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service. Effective January 26, 1995.

Department of Commerce

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective December 7, 1994.

Confidential Assistant to the Deputy Assistant Secretary for International Economic Development. Effective December 7, 1994.

Deputy Director to the Director, Office of Public, Congressional and Intergovernmental Affairs. Effective December 12, 1994.

Special Assistant to the Director, Office of White House Liaison. Effective December 19, 1994.

Special Assistant to the Director, Bureau of Census. Effective January 10, 1995.

Assistant Director for Operations to the Director for Strategic Planning. Effective January 17, 1995.

Special Assistant to the Deputy Chief of Staff. Effective January 26, 1995.

Confidential Assistant to the Deputy Chief of Staff. Effective January 26, 1995.

Special Advisor to the Director, Oceanic and Atmospheric Administrator. Effective January 26, 1995.

Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective January 26, 1995.

Department of Defense

Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs). Effective December 12, 1994.

Defense Fellow to the Assistant Secretary of Defense for International Security Affairs. Effective December 14, 1994.

Intergovernmental Affairs Specialist to the Under Secretary of Defense (Personnel and Readiness). Effective December 21, 1994.

Confidential Assistant to the Assistant Secretary of Defense, Force Management Policy. Effective December 21, 1994.

Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operation and Low Intensity Conflict). Effective December 23, 1994.

Program Analyst to the Deputy Under Secretary (Environmental Secretary). Effective January 26, 1995.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective December 19, 1994.

Confidential Assistant to the Director, Office of Intergovernmental and Constituent Affairs. Effective December 23, 1994.

Confidential Assistant to the Special Assistant to the Secretary. Effective December 23, 1994.

Special Assistant to the Director, White House Initiative on Hispanic Education Staff. Effective December 23, 1994.

Special Assistant to the Under Secretary for Policy, Planning and Administration. Effective December 23, 1994.

Special Assistant to the Senior Advisor on Education. Effective December 30, 1994.

Special Assistant to the Commissioner, Rehabilitation Service Administration. Effective January 10, 1995.

Department of Energy

Staff Assistant to the Assistant Secretary for Human Resources and Administration. Effective January 10, 1995.

Staff Assistant to the Principal Deputy Assistant Secretary for Human Resources and Administration. Effective January 10, 1995.

Special Assistant for Communications to the Director, Office of Energy Research. Effective January 10, 1995.

Staff Assistant to the Assistant Secretary for Environmental Management. Effective January 26, 1995.

Special Liaison (Federal Power Marketing Administration) to the

Assistant Secretary for Energy Efficiency and Renewable Energy. Effective January 26, 1995.

Department of Health and Human Services

Executive Assistant to the Assistant Secretary for Legislation. Effective December 23, 1994.

Special Assistant to the Surgeon General, Public Health Service. Effective December 23, 1994.

Executive Assistant for Legislative Affairs to the Assistant Secretary for Health. Effective January 24, 1995.

Special Assistant to the Deputy Secretary. Effective January 26, 1995.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective January 26, 1995.

Department of Housing and Urban Development

Executive Assistant to the Assistant Secretary for Community Planning and Development. Effective December 13, 1994.

Director, Hospital Mortgage Insurance Staff to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective January 10, 1995.

Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing Recovery. Effective January 10, 1995.

Special Assistant to the Secretary's Representative. Effective January 17, 1995.

Department of the Interior

Special Assistant to the Deputy Director, External Affairs, U.S. Fish and Wildlife Service. Effective December 20, 1994.

Special Assistant (Advance) to the Deputy Chief of Staff. Effective January 10, 1995.

Deputy Scheduler to the Deputy Chief of Staff. Effective January 26, 1995.

Department of Justice

Counsel to the Deputy Attorney General. Effective December 13, 1994.

Department of Labor

Director of Scheduling and Advance to the Chief of Staff. Effective December 1, 1994.

Special Assistant to the Secretary. Effective December 14, 1994.

Project Director to the Assistant Secretary for Public Affairs. Effective December 19, 1994.

Chief of Staff to the Assistant Secretary for Public Affairs. Effective December 19, 1994.

Chief Technical Advisor to the Assistant Secretary for Mine Safety and Health. Effective December 23, 1994.

Special Assistant to the Director, Women's Bureau. Effective December 23, 1994.

Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective January 10, 1995.

Director of Communications and Public Information to the Assistant Secretary for Employment and Training. Effective January 17, 1995.

Special Assistant to the Assistant Secretary for Policy. Effective January 18, 1995.

Special Assistant to the Assistant Secretary for Administration and Management. Effective January 20, 1995.

Legislative Office to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 22, 1995.

Staff assistant to the Deputy Under Secretary for International Labor Affairs. Effective January 26, 1995.

Department of State

Secretary to the Assistant Secretary, Consular Affairs. Effective December 23, 1994.

Policy Analyst to the Deputy Assistant Secretary for Environment and Development. Effective December 23, 1994.

Secretary (Steno) to the United States Ambassador and U.S. Representative to the United Nations. Effective January 25, 1995.

Department of Transportation

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective December 13, 1994.

Special Assistant to the Director of External Communications. Effective December 23, 1994.

Special Assistant to the Deputy Secretary of Transportation. Effective January 26, 1995.

Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective January 26, 1995.

Department of the Treasury

Confidential Assistant to the Secretary of the Treasury. Effective December 8, 1994.

Environmental Protection Agency

Counsel to the Assistant Administrator for Policy, Planning and Evaluation. Effective December 13, 1994.

Equal Employment Opportunity Commission

Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective January 10, 1995.

Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective January 26, 1995.

Export-Import Bank of the United States

Personal and Confidential Assistant to the Vice Chairman. Effective December 28, 1994.

Administrative Assistant to the Board of Directors and the Chairman. Effective December 28, 1994.

Federal Communications Commission

Special Assistant to the Director, Office of Public Affairs. Effective January 24, 1995.

Special Assistant to the Chief, Common Carrier Bureau. Effective January 24, 1995.

Federal Maritime Commission

Counsel to the Commissioner. Effective January 24, 1995.

National Aeronautics and Space Administration

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective January 10, 1995.

Office of Management and Budget

Confidential Assistant to the Associate Director, Health and Personnel, to the Associate Director, Health and Personnel. Effective January 10, 1995.

Confidential Assistant to the Associate Director, Natural Resources, Energy and Science. Effective January 10, 1995.

Office of National Drug Control Policy

Legislative Analyst to the Director, Office of Public Affairs and Legislative Affairs. Effective January 10, 1995.

Office of Personnel Management

Special Assistant to the Director of the Office of Communications. Effective January 5, 1995.

Coordinator, Interagency Affairs to the Director of Agency Initiatives. Effective January 6, 1995.

Official Residence of the Vice President

Special Assistant to the Special Assistant to the Vice President and Chief of Staff to Mrs. Gore. Effective December 14, 1994.

President's Commission on White House Fellowships

Education Director to the Director, President's Commission on White House Fellowships. Effective December 13, 1994.

Small Business Administration

Special Assistant to the Associate Deputy Administrator for Economic Development. Effective January 26, 1995.

U.S. Arms Control and Disarmament Agency

Secretary (Office Automation) to the Assistant Director, Intelligence, Verification and Information Support Bureau. Effective December 23, 1994.

United States Information Agency

Director, Office of Thematic Programs to the Associate Director, Bureau of Information. Effective December 19, 1994.

Senior Assistant to the Director, United States Information Agency. Effective December 19, 1994.

Senior Advisor to the Associate Director, Bureau of Information. Effective January 10, 1995.

Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs. Effective January 12, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–6026 Filed 3–10–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Employees Health Benefits Program; Invitation for Applications and Benefits Change Proposals

AGENCY: Office of Personnel Management.

ACTION: Notice of the acceptance of applications from new comprehensive medical plans (HMO's) for participation in the Federal Employees Health Benefits (FEHB) Program, and benefits change proposals from plans currently participating in the FEHB Program, for contract year 1996.

SUMMARY: Notice is hereby given that the Office of Personnel Management (OPM) will consider new applications from HMO's for the FEHB Program contract year beginning January 1, 1996. OPM will also consider benefits change proposals from plans currently in the FEHB Program.

SUPPLEMENTARY INFORMATION: Section 890.203 of title 5, Code of Federal Regulations, authorizes OPM to invite applications from HMO's to participate in the FEHB Program, and to consider changes in rates and benefits for health benefits plans currently participating in the Program, when it determines that it is in the best interests of enrollees and the Program to do so. By this notice, OPM is officially announcing its decision to consider applications from new HMO's, and benefits change proposals from participating plans, for contract year 1996.

OPM is extending the deadline for the submission of the completed application from January 31 to March 31, 1995. Plans must submit evidence demonstrating they meet all requirements for approval by March 31, 1995. However, that date would be extended, if OPM requests additional information, to 30 days from the date of OPM's request. All rate and benefits submissions are due by May 31, 1995.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–6116 Filed 3–10–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Public Hearings on Establishment of a Tariff-Rate Quota on Imported Tobacco

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearings.

SUMMARY: Pursuant to section 125(f) of the Trade Act of 1974, the Office of the United States Trade Representative has scheduled a public hearing on the potential establishment of a tariff-rate quota on certain imported tobaccos.

DATES: The public hearing will be held on Tuesday, April 4, 1995.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public hearings and/or public comments, contact Carolyn Frank, Executive Secretary, Trade Policy Staff Committee (TPSC) (202–395–9557). All other questions should be directed to Thomas Hushek, Senior Economist for Agricultural Affairs (202–395–6127).

SUPPLEMENTARY INFORMATION: On June 28, 1994, the United States notified the Secretariat of the General Agreement on Tariffs and Trade 1947 (GATT 1947) of its proposal to modify certain concessions with respect to tobacco, in accordance with the provisions and procedures of Article XXVIII, paragraph 5 of the GATT 1947. (This notification was provided again on February 27, 1995 to the Secretariat of the World Trade Organization, in accordance with Article XXVIII of the GATT 1994). In July 1994, the United States entered into negotiations and consultations pursuant to Article XXVIII with qualifying GATT contracting parties (initial negotiating rights holders and principal and substantial suppliers).

Pursuant to Article XXVIII, the United States proposes to establish a tariff-rate quota on nine current tariff categories of the Harmonized Tariff Schedule of the United States (HTSUS) (2401.10.60, 2401.20.30, 2401.20.80, 2401.30.30, 2401.30.60, 2401.30.90, 2403.10.00, 2403.91.40, and 2403.99.00) to cover flue-cured, burley and other light air-cured tobaccos that are imported to be used in the manufacture of cigarettes for domestic consumption. The in-quota tariff rates would be equal to the Uruguay Round concession rates. The over-quota tariff rates would be as high as 350 percent *ad valorem*.

Other tobaccos, including oriental and cigar type tobaccos, would not be subject to the quantitative limitations of the tariff-rate quota. Imported flue-cured, burley and other light air-cured tobaccos used to manufacture products other than cigarettes would also not be subject to the tariff-rate quota.

Imported flue-cured, burley and other light air-cured tobaccos used to manufacture exported cigarettes would be eligible for manufacturing duty-drawback on an identity-preserved basis. Under section 422 of the Uruguay Round Agreements Act, upon proclamation of the tariff-rate quota, section 1106(a) of the Omnibus Budget and Reconciliation Act of 1993 (7 U.S.C. 1314i), which concerns domestic marketing assessments for imported tobacco, would not be in effect for any calendar year other than 1994.

Section 125(c) of the Trade Act of 1974 (19 U.S.C. 2135) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to that Act, section 350 of the Tariff Act 1930 or section 201 of the Trade Expansion Act of 1962, withdraws or modifies any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. As amended by section 421 of the Uruguay Round Agreements Act, section 125(c) authorizes the President to proclaim increased duties on the nine tariff categories of tobacco of up to 350% above the rates existing on January 1, 1975.

Before taking any action under section 125 to increase duties, the President is required by section 125(f) to provide for public hearings at which time interested

persons will be given a reasonable opportunity to be present, to produce evidence and to be heard.

NOTICE OF PUBLIC HEARINGS: Pursuant to section 125(f) of the Trade Act of 1974 (19 U.S.C. 2135), the Trade Policy Staff Committee (TPSC), chaired by the Office of the United States Trade Representative, has scheduled a public hearing beginning at 10:00 a.m., on Tuesday, April 4, 1995, at the White House Conference Center, 726 Jackson Place, Washington, DC.

REQUESTS TO PRESENT ORAL TESTIMONY: Parties wishing to testify orally at the hearings must provide written notification of their intention by noon, March 24, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 501, 600 17th Street N.W., Washington, D.C. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) a brief summary of their presentation, including the product(s), with HTSUS numbers. Those parties presenting oral testimony must also submit a written brief, in 20 copies by noon, March 24, 1995. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide 30 typed copies of their oral statement at the time of the hearings. Any confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

WRITTEN BRIEFS: Those persons not wishing to participate in the hearing may submit written comments, in twenty typed copies, no later than noon, March 29, 1995 to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 501, 600 17th Street, N.W., Washington, D.C. Comments should state clearly the position taken and describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room. An appointment to review the file may be made by calling Brenda Webb (202–395–6186).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–6055 Filed 3–10–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

Members of the Commission staff will attend a meeting in the Arlington Ballroom in the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia on March 13, 1995. At the meeting, representatives of the United States Postal Service will discuss potential proposals to amend the Domestic Mail Classification Schedule with mailers interested in reclassification. The meeting is scheduled to begin at 1:00 pm and conclude at approximately 4:00 pm.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–6150 Filed 3–8–95; 4:20 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35449; File No. SR–CHX–95–5]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Authority of the Committee on Floor Procedure

March 7, 1995.

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 February 10, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 1, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

At present, Rule 3 of Article XII provides the Committee on Floor Procedure with the authority to summarily fine members and exclude them from the Exchange premises under certain circumstances. The Exchange proposes to amend Rule 3 and interpretation .02 thereunder to provide the Committee on Floor Procedure with the same authority over persons associated with a member.[2] Under the current Rule 3, the Committee on Floor Procedure or an appropriately designated subcommittee has the authority to summarily fine and exclude from the Exchange a member whose conduct is deemed to be improper and to recommend investigations pursuant to Rule 1 of Article XII regarding any conduct on the floor of the Exchange. Specifically, any member of the Floor Committee or a member of its appropriately designated subcommittee may summarily fine any member for conduct classified as Class B[3] in an amount not to exceed $100. For conduct classified as Class A offenses,[4] any member of the Floor Committee or a member of its appropriately designated subcommittee with the concurrence of two other floor officials (floor governors if immediately available) may summarily fine a member in an amount not to exceed $2,500 and summarily exclude a member from the Exchange for no longer than the remainder of the trading day.

For either class of offenses, a member, who has been adversely affected by any action taken under Rule 3, except for a summary exclusion,[5] by any person or

[1] *See* letter from David Rusoff, Foley & Lardner, to Jennifer Choi, SEC, dated February 27, 1995. The original filing incorrectly references Rule 3 of Article IV of the Exchange Rules as the rule to be amended. Amendment No. 1 alters the proposed rule change to reference Rule 3 of Article XII as the correct rule to be amended.

[2] The Exchange does not specifically define the term ''associated person'' in its Rules. For purposes of Rule 3, Article XII, the Exchange refers to an associated person as defined in Section 3(a)(18) of the Securities Exchange Act of 1934. Conversation with David Rusoff, Foley & Lardner, and Jennifer Choi, Attorney, SEC, dated February 27, 1995. Section 3(a)(18) defines an ''associated person of a broker or dealer'' as any ''partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer * * *.''

[3] Class B violations involve minor offenses such as dress code and smoking violations.

[4] Class A represents more serious violations than Class B and includes such conduct as fighting, threatening speech, and other conduct that is detrimental to the interest or welfare of the Exchange.

[5] A member summarily excluded has the right to petition for reinstatement after a sufficient ''cooling-off'' period has elapsed.

body, other than the full Floor Procedure Committee, may appeal to the full Floor Procedure Committee within five days of receiving notice of the action by making a written request. Upon appeal, the full Floor Procedure Committee may increase or decrease the amount of a summary fine or the length of an exclusion from the Exchange. The Floor Procedure Committee, however, may not fine a member in an amount in excess of $2,500 or exclude a member from the Exchange in excess of five full business days. The decision of the Floor Procedure Committee is deemed final with respect to any action involving no more than a $100 fine.

By written request, a member may appeal a determination of the full Floor Procedure Committee involving more than a $100 fine to the Executive Committee. The Executive Committee will review the report of the action as certified by the Secretary unless it decides to open the record for additional evidence. The Executive Committee may increase or decrease the amount of a summary fine or the length of an exclusion after review. The Executive Committee, however, may not fine a member in an amount in excess of $2,500 or exclude a member from the Exchange in excess of five full business days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

At present, CHX Rule 3 of Article XII describes the ability of the Exchange's Committee on Floor Procedure to summarily fine *members* and exclude them from the Exchange premises. The purpose of the proposed rule change is to give the Committee on Floor Procedure the same authority over *persons associated with a member.*

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanisms of a free and open market.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 Exchange. All submissions should refer to File No. SR–CHX–95–5 and should be submitted by April 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6086 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35448; File No. SR–CSE–95–03]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Preferencing of Agency Orders by Approved Dealers

March 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1995, the Cincinnati Stock Exchange; Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 CSE hereby proposes to permanently adopt Exchange Rule 11.9(u) and related portions of Rule 11.9(a) and (m). The rules were approved by the Commission on a pilot basis on February 7, 1991, and have been in effect since then.[1] The current pilot expires May 18, 1995.

The Exchange is also requesting that, in granting permanent approval, the Commission not impose two restrictions related to payment for order flow and the number of securities in which an Exchange specialist may preference. These conditions appear only in the text of certain Commission releases approving and extending the pilot program; they are not part of the text of the Exchange's rules. The text of the proposed rule change is as follows

[1] *See,* Securities Exchange Act Release Nos. 28866 (February 7, 1991), 56 FR 5854 (February 13, 1991); 29524 (August 5, 1991), 56 FR 38160 (August 12, 1991), 30353 (February 7, 1992), 57 FR 5918 (February 18, 1992); 31011 (August 7, 1992), 57 FR 38704 (August 26, 1992); 32280 (May 7, 1993), 58 FR 28424 (May 13, 1993); 33975 (April 28, 1994), 59 FR 23243 (May 5, 1994); 34493 (August 5, 1994), 59 41531 (August 12, 1994).

whereby the additions are *italicized* and deletions are [bracketed]:

Rule 11.9 National Securities Trading System

(a) through (k)—No change.

(l) Public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers in the System at the same price. Subject to the foregoing condition,

(1) All bids entered in the System shall be queued for execution so that the highest price bid shall be the first to be executed and so that, in the case of bids at the same price, *except in the case of Approved Dealer bids entered pursuant to subparagraph (u),* the bid entered earliest in time shall be the first to be executed; and

(2) all offers entered in the System shall be queued for execution so that the lowest price offered shall be the first to be executed and so that, in the case of offers at the same price, *except in the case of Approved Dealer* [bids] *offers entered pursuant to subparagraph (u),* the offer entered earliest in time shall be the first to be executed.

(m) It shall be the responsibility of each Approved Dealer or other Proprietary Member when trading on the Exchange for his own account or as agent for professional agency orders in round lots of designated Issues to effect such transactions through the System and, in so doing, to yield priority to:

(1) all public agency orders in the System at prices equal to, or better than, his order, bid, or offer; and

(2) all orders, bids and offers of Approved Dealers and other Proprietary Members for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or *(ii) in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such approved Dealers are representing as agent pursuant to subparagraph (u).*

(n) through (t)—No change.

(u) Public agency market and marketable limit orders which an Approved Dealer represents as agent may be preferenced to such Approved Dealer in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m). Notwithstanding subparagraphs (c) and (n), an Approved Dealer shall be Dealer of the day with respect to orders preferenced under this subparagraph (u). Additionally, Designated Dealers shall be allowed to preference their customer order flow that is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average (''DJIA'') declines by fifty points or more from the previous day's closing value.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent Rule 11.9(u) and selected portions of Rule 11.9(l) and (m), which were approved by the Commission on a pilot basis in February, 1991. The rules provide an exception to the Exchange's time priority requirements between competing specialists when one specialist is interacting with his or her own customer order flow.

On the New York Stock Exchange (''NYSE'') and other exchanges, a unitary specialist can, without the price competition of other specialists, internalize the order flow of his or her firm or an affiliated firm. On CSE, however, a competing specialist system limited the ability of a specialist to interact with his or her own order flow. Therefore, in order to provide the same advantage which specialists on other exchanges have vis-a-vis their own customer order flow, the CSE modified its time priority rules in order to permit one specialist to step ahead of another specialist at the same price when that first specialist is trading with his or her own customer order. This is the essence of the Exchange's program. All other aspects of a traditional auction market are preserved on CSE: public orders in the CSE book continue to have priority over all competing specialist interest, and a specialist who participates in the program must still provide ''best execution'' to his customer's order.

CSE's pilot has been operating for over four years and as documented within the Exchange's ''Quality of Markets Analysis'' dated January 18, 1995,[2] the program has served as a means of improving the Exchange's market. In light of the favorable impact the program has exhibited on CSE's market and CSE's participation in the National Market System, the Exchange is requesting that the rules be approved on a permanent basis.

The Exchange is also requesting that the Commission eliminate two of the three restrictions imposed on the pilot when permanently approving the rules. When the pilot was first approved, Approved Dealers could only execute preferenced trades in 60 securities to which they had been appointed. With the approval of subsequent pilot extensions the number has been raised to 350 securities, where it has been capped for over two years. The Exchange believes that this restrictive cap should be removed since it serves no regulatory purpose.

The second restriction, prohibiting preferencing specialists from making direct cash payments for retail orders, conflicts with the practice of specialists on other regional markets. When the CSE program was initially approved, the Commission had not yet reached a determination and was studying what impact the payment for order flow had on the market. Recently, the Commission reached a conclusion and decided that payment for order flow should be addressed through enhanced disclosure requirements to make investors aware of how their orders were handled. CSE specialists must abide by these disclosure standards just as their counterparts on other markets. On the other hand, CSE specialists currently have the additional restrictions that prohibits payment for order flow. The Exchange believes that this restriction is now unnecessary in light of the Commission's decision.

The third restriction addresses trading when the Dow Jones Industrial Average declines by more than fifty points from the previous day's closing value. The Exchange has included this restriction as part of paragraph (u).

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as required by Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

[2] The report is available in the Commission Public Reference room.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On February 10, 1995, the Exchange requested comments from the participants of the Intermarket Trading System (''ITS'') pursuant to Section 8(e)(iii) of the ITS Plan. On February 17, 1995, the NYSE submitted a brief comment letter in which they had only one substantive and one procedural comment. The NYSE believes that the CSE mischaracterized the functioning of NYSE specialists and misapplied the term ''internalize'' within the Statement of Purpose of the filing. The NYSE contends that the term ''internalize'' is inapplicable to the NYSE. The CSE, within the Statement of Purpose, states ''On the NYSE and other exchanges, a unitary specialist *can* (emphasis added), without the price competition of other specialists, internalize order flow of his or her firm or an affiliated firm.''

Regarding the procedural comment, the NYSE states that the CSE has not summarized or responded in detail to prior comments made on CSE's preferencing pilot. The CSE has not received any comments, prior to this NYSE letter, on either CSE's initial filing proposing preferencing (SR–CSE–90–06, Release No. 34–27910) or any of the six amendments/extensions subsequently approved by the Commission. However, on August 25, 1993, the NYSE took the opportunity to include within their comment letter regarding the Boston Stock Exchange's Competing Specialists proposal (SR–BSE–93–12, Release No. 34–32549), comments on the preferencing pilot at the CSE. The CSE, in a letter to Brandon Becker, Director, Division of Market Regulation dated March 18, 1994, accordingly addressed certain assertions concerning the CSE which appeared in correspondence from the NYSE. The CSE, under separate letter, requested the Secretary to place copies within files SR–CSE–93–03 and SR–CSE–94–01.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. (SR–CSE–95–03 and should be submitted by April 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6085 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35447; File No. SR–MSTC–95–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to the Legal Expert System Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 27, 1995, the Midwest Securities Trust Company (''MSTC'') 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 MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to waive the fees associated with the Legal Expert System until March 1, 1995.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC has prepared summaries, set forth in section (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 change is to waive the fees for the Legal Expert System until March 1, 1995.

The text of the proposed rule change is as follows with additions italicized:

MSTC LEGAL EXPERT SYSTEM

Terminal inquiry	
1–2,500 inquiries per month.	$0.50/inquiry.
2,501–5,000	0.35/inquiry.
5,001–10,000	0.26/inquiry.
10,001 and over	0.17/inquiry.

MSTC full legal deposit participants will receive a free inquiry for each legal deposit submitted to MSTC. The free inquiries are only valid in the month the legal deposit is made.

The above terminal inquiry fees are waived until March 1, 1995.

The proposed rule change is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable fees and other charges among participants using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose a

[2] For a complete description of the Legal Expert System, refer to Securities Exchange Act Release Nos. 33756 (March 11, 1994), 59 FR 13350 [File No. SR–MSTC–94–02] (order approving a rule change regarding the Legal Expert System's fees and a clarification disclaiming any liability on MSTC's part for any misinformation contained in the Legal Expert System) and 35098 (December 13, 1994), 59 FR 65551 [SR–MSTC–94–17] (order modifying the pricing structure of the Legal Expert System).

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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(e)[4] thereunder in that it establishes or changes a due, fee, or other charge imposed by MSTC. At any time within sixty days of the filing of such rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such act is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W. Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MSTV. All submissions should refer to File No. SR–MSTC–95–03 and should be submitted by April 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6087 Filed 3–10–95; 8:45 am]

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[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] 17 CFR 240.19b–4(e) (1994).

[5] 17 CFR 200.30(a)(12) (1994).

[Release No. 34–35446; File No. SR–MSRB–94–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G–8 on Recordkeeping

March 6, 1995.

On August 18, 1994, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends rule G–37 on political contributions and prohibitions on municipal securities business, and rule G–8 concerning recordkeeping.[4]

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34630, September 1, 1994) and by publication in the **Federal Register** (59 FR 46682, September 9, 1994). Eleven comment letters were received.[5] This order approves the proposed rule change.

I. Introduction

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[6] In response to numerous inquiries received by the Board concerning the application of the rule, on May 24, 1994, the Board filed with the Commission a Question and Answer (''Q&A'') interpretation of the rule.[7] On June 3, 1994, the Commission approved amendments to the rule which (i) provide a procedure whereby dealers may seek relief from the rule's prohibition on business, in limited circumstances, and (ii) clarify certain definitions in the rule.[8] The Board has filed with the Commission subsequent Q&A interpretations of the rule.[9] The rule change approved herein also is intended to address concern over certain aspects of rule G–37.

II. Amendments to Rule G–37 and Rule G–8

The rule change approved today amends rule G–37 and rule G–8 by: (i) amending the definition of municipal finance professional by designating as a municipal finance professional any associated person who is both (a) a municipal securities principal or a municipal securities sales principal and (b) a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business; (ii) amending the definition of municipal finance professional so that any person designated as a municipal finance

[1] On November 9, 1994, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 withdraws from the filing the proposed amendment to rule G–37(g)(iv)(A). The MSRB had proposed to amend the definition of ''municipal finance professional'' contained in rule G–37(g)(iv)(A) to exempt retail sales persons from being deemed ''municipal finance professionals.''

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] The Board published the text of the proposed rule change in the August 1994 *MSRB Reports*, Vol. 14, No. 4, at 27–32.

[5] Letter from Mark D. Schwartz, Esq. (''Schwartz'') to Arthur Levitt, Chairman, Commission, dated September 18, 1994 (''Schwartz Letter''); Letter from Heather L. Ruth, President, Public Securities Association (''PSA'') to Jonathan G. Katz, Secretary, Commission, dated September 18, 1994 (''PSA Letter''); Letter from Patrick J. Manning, President, Chemical Securities Inc. (''Chemical'') to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 (''Chemical Letter''); Letter from Rhonda G. Kirschner, Senior Attorney and Corporate Vice President, Paine Webber Inc. (''Paine Webber'') to Jonathan G. Katz, Secretary, Commission, dated September 30, 1994 (''Paine Webber Letter''); Letter from Robin L. Wiessmann, Principal, Artemis Capital Group, Inc. (''Artemis'') to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 (''Artemis Letter''); Letter from W. Robb Hough, Jr., President, William R. Hough & Co. (''Hough'') to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 (''Hough Letter''); Letter from Robert K. Dalton, Vice Chairman and William H. Coughlin, President, George K. Baum & Co. (''Baum'') to Jonathan G. Katz, Secretary, Commission, dated September 28, 1994 (''Baum Letter''); Letter from Brian C. Underwood, Vice President—Director of Compliance, A.G. Edwards & Sons, Inc. (''Edwards'') to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 (''Edwards Letter''); Letter from Samuel J. Winer, Esq., Arter & Hadden to Jonathan G. Katz, Secretary, Commission, dated October 20, 1994 (''Arter & Hadden Letter''); Letter from A. George Saks, Executive Vice President, Secretary and General Counsel, Smith Barney Inc. (''Smith Barney'') to Jonathan G. Katz, Secretary, Commission, dated September 29, 1994 (''Smith Barney Letter''); Letter from Steven D. Vander Clay, Vice President, NBD Bank, N.A. (''NBD'') to Jill C. Finder, Assistant General Counsel, MSRB, dated October 20, 1994 (''NBD Letter'').

[6] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994) (''Approval Order''). The rule applies to contributions made on and after April 25, 1994.

[7] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994). The interpretations were published in the June 1994 MSRB Reports.

[8] Securities Exchange Act Release No. 34160 (June 3, 1994); 59 FR 30376 (June 13, 1994).

[9] *See* Securities Exchange Act Release No. 35128 (December 20, 1994), 59 FR 66989 (December 28, 1994); Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994). *See also MSRB Reports*, Vol. 14, No. 5, at 8 (December 1994); Vol. 14, No. 4, at 27–32 (August 1994). The interpretations also are available for inspection and copying at the Commission's public reference room and at the Board.

professional will keep that designation for two years after the last activity which would trigger that designation; (iii) requiring brokers, dealers and municipal securities dealers to disclose all *payments* made to political parties, even if the payments do not constitute *contributions* as defined in the rule; and (iv) amending the definition of ''issuer'' to exclude all issuers of separate securities, as defined in Rule 3b–5 under the Act.

A. Supervisors of Municipal Finance Professionals

Rule G–37(g)(iv) provides that the term ''municipal finance professional'' means:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G–3(a)(i);

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is a direct supervisor of such persons up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a); or

(D) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G–1) executive or management committee or similarly situated officials, if any.

Each person listed by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G–8(a)(xvi) is deemed to be a municipal finance professional.

A municipal finance professional is defined to include any direct supervisor of a municipal finance professional up through including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G–1(a).

For example, a person from the corporate department will be deemed a municipal finance professional if that person assist the municipal department in soliciting municipal securities business and all direct corporate department supervisors of that person also will be deemed municipal finance professionals under rule G–37, regardless of whether that person's municipal securities activities are subject to the supervision of a principal in the municipal securities department. Concern has been expressed that this part of the definition unnecessarily covers persons whose duties and activities do not provide them with an opportunity or incentive to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials.

The MSRB noted in its initial filing of rule G–37 that the definition of municipal finance professional includes those individuals who have a pecuniary interest in soliciting municipal securities business on behalf of a dealer. It is those persons who may be in a position to make political contributions for the purpose of influencing the awarding of such business by issuer officials. Such persons could include those in the public finance department, as well as underwriters, traders and institutional and retail sales persons primarily engaged in municipal securities representative activities. However, a corporate department supervisor typically does not have a pecuniary interest in soliciting municipal securities business, and typically does not acquire such an interest solely because a person supervised by that supervisor assists the municipal department by soliciting work from a municipal issuer.

The MSRB believes that amending the definition of municipal finance professional to designate as a municipal finance professional only a supervisor of any person primarily engaged in municipal securities representative activities or who solicits municipal securities business who also is a municipal securities principal or a municipal securities sales principal will facilitate compliance with rule G–37. Thus, in the example given above, the corporate department supervisors would not be included in the definition of municipal finance professional.

The MSRB continues to believe that if a retail sales person becomes a municipal finance professional by virtue of soliciting municipal securities business, then the municipal securities principal responsible for supervising that person's municipal securities activities should be designated a municipal finance professional. In most cases, this would include the sales person's branch manager (a municipal securities sales principal). Such supervisory personnel continue to be included within the definition of municipal finance professional because the MSRB is concerned that retail sales persons may solicit municipal securities business at the request of, or at least with the knowledge of, their supervisors. Thus, the amendment is intended to ensure that, if retail sales persons are soliciting municipal securities business, the supervisors of such persons also are deemed to be municipal finance professionals.

Finally, the definition of municipal finance professional has been amended to clarify that the supervisors of the municipal securities principals and municipal securities sales principals included within the definition also are deemed to be municipal finance professionals.

B. Designation as a Municipal Finance Professional

The MSRB has been asked whether a dealer can establish its own standards under which someone who solicits municipal securities business could relinquish municipal finance professional status upon completing the solicitation activity.[10] The rule change approved today amends rule G–37(g)(iv) to provide that each person designated by a dealer as a municipal finance professional shall retain this designation for two years after the last activity or position which gave rise to the designation. For instance, if an associated person is designated a municipal finance professional due to that person's solicitation activities, then that designation shall extend for two years from the date of the particular solicitation. Moreover, if this person continues to solicit municipal business, then each such solicitation triggers a new two-year period. Thus, if a municipal finance professional wants to divest himself of this designation, he must forego all soliciting of municipal business for two years (as well as avoid the other situations, set forth in rule G–37(g)(iv), giving rise to the designation of municipal finance professional). So too, if an institutional sales person primarily engaged in municipal securities representative activities is transferred to the corporate department, such person's contributions to officials of issuers and payments to political parties must be recorded for two years after such transfer.[11] The amendment is intended to ensure that contributions and payments by municipal finance professionals are not being made to influence the awarding of municipal

[10] *See* Letter from Heather L. Ruth, President, PSA to Diane G. Klinke, General Counsel, MSRB (July 25, 1994) (''July PSA Letter''), *supra* n. 6.

[11] However, rule G–37 does not require a firm to monitor and record the activities of a municipal finance professional that it no longer employs.

securities business. The amendment also will allow dealers, after this two-year period, to remove these persons from their list of municipal finance professionals.

C. Contributions and Other Payments Made to Political Parties

Contributions to political parties do not trigger rule G–37's prohibition on business. Such contributions, however, are subject to the rule's recordkeeping and reporting provisions, as set forth in rule G–8(a)(xvi). These disclosure requirements are intended to help ensure that dealers do not circumvent the prohibition on business in the rule by indirect contributions to issuer officials through contributions to state or local political parties. For example, if a contribution to a political party is earmarked or known to be provided to an official or officials of a particular issuer, then the dealer would violate the rule's proscription against indirect violations, thereby triggering the two-year prohibition on business with that issuer.

Certain dealers and other industry participants have notified the MSRB that certain political parties currently are engaging in fundraising practices which, according to these political parties, do not invoke application of rule G–37. For example, some of these entities currently are urging dealers to make payments to political parties earmarked for expenses other than political contributions (such as administrative expenses or voter registration drives). Since these payments would not constitute ''contributions'' under the rule, the recordkeeping and reporting provisions would not apply. The MSRB is concerned, based upon this information, that the same pay-to-play pressures that motivated the Board to adopt rule G–37 may be emerging in connection with the fundraising practices of certain political parties described above.

The purpose of those disclosure requirements in rule G–37 pertaining to political parties is to ensure that funds contributed to political parties by dealers, Political Action Committees (''PACs''), municipal finance professionals and executive officers do not represent attempts to make indirect contributions to issuer officials, in contravention of rule G–37. The rule change approved today amends the recordkeeping and reporting provisions of rule G–37 (as set forth in rule G–8(a)(xvi)) to require dealers to record and disclose all payments made to political parties. The term ''payment'' is defined as any gift, subscription, loan, advance or deposit of money or anything of value. This definition is derived from the definition of ''contribution'' in rule G–37(g)(i), but does not include the limits on the purposes for which such money is given, as currently set forth in the definition of contribution.

Thus, the amendment will require dealers to record and report any payments to political parties by dealers, PACs, municipal finance professionals and executive officers, regardless of whether those payments constitute contributions. These disclosure requirements are intended to assist in severing any connection between payments to political parties and the awarding of municipal securities business. The amendment is not intended to restrict the personal volunteer work of municipal finance professionals for political parties.

D. Definition of Issuer

Under rule G–37, the term ''issuer'' is defined as any governmental issuer specified in Section 3(a)(29) of the Act (*i.e.*, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states) and the issuer of any separate security, including a separate security as defined in Rule 3b–5 under the Act. In most instances, the issuers of separate securities are corporate obligors of industrial revenue bonds and bank issuers of letters of credit.

As noted above, rule G–37 was adopted in order to cleanse the municipal securities market of pay-to-play pressures. However, pay-to-play pressures do not exist when the issuer of a separate security is a corporate obligor of industrial revenue bonds or a bank issuer of a letter of credit. The Board itself recognized this when it noted in its May 1994 Q & A that, when filing Form G–37, dealers do not have to include corporate issuers in industrial development bond issues because no contributions (as defined in rule G–37) would be made to such corporations.[12] Therefore, the rule change amends the rule G–37 definition of issuer by omitting issuers of separate securities from the definition of issuer.

III. Comment Letters

A. Supervisors of Municipal Finance Professionals

Chemical and Artemis express unqualified support for designating as municipal finance professionals only those supervisors of municipal finance professionals who are also municipal securities principals or municipal securities sales principals. The PSA Letter also expresses general support for this amendment. The Edwards Letter expresses support for the views expressed in the PSA Letter; therefore, Edwards generally supports this amendment.

Schwartz opposes this amendment. The Schwartz Letter asserts that the amendment would ''open a loophole further'' because political fundraising has been happening across departments. The Commission notes that the amendment does not purport to exclude all supervisors of municipal finance professionals. Furthermore, the MSRB stated that the amendment was designed to cover situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors.

The Arter & Hadden Letter also expresses opposition to this amendment. The Arter & Hadden Letter reasons that the supervisor of a retail sales person involved in municipal securities solicitation activity may not be involved in supervising that person's solicitation activity. The Arter & Hadden Letter argues that the MSRB was correct to amend rule G–37 so that a supervisor of persons primarily engaged in municipal securities representative activities or who solicit municipal securities business is deemed a municipal securities professional only if that supervisor is also a municipal securities principal or a municipal securities sales principal. However, the Arter & Hadden Letter criticizes the proposed amendment because, it asserts, the MSRB states that it would deem a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. Arter & Hadden asserts that a branch manager does not have the background or expertise to supervise the solicitation activities of a retail sales representative; therefore, a branch manager should not be restricted in the same manner as a person who does have the background and expertise to supervise the solicitation activities of a retail sales representative.[12]

[12] Pursuant to rule G–37, a contribution is defined as ''any gift, subscription, loan advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office.'' Thus, by definition, any funds given to corporate issuers would not constitute a ''contribution'', since such corporations are not the issuers or issuer officials contemplated by the rule.

Smith Barney also opposes this amendment. The Smith Barney Letter objects to the MSRB deeming a branch manager and a branch manager's supervisor to be municipal finance professionals if a retail sales person in that branch office was soliciting municipal securities business. It notes that the MSRB is concerned about situations in which retail sales persons are soliciting municipal securities business at the request of, or at least with the knowledge of, their supervisors; Smith Barney does not consider those reasons sufficient to justify the apparent breadth of the amendment. Smith Barney states that a simpler approach would be to interpret solicitation as asking others to solicit, and that the MSRB should not be concerned about supervisors who simply know that their sales persons are soliciting municipal securities business. The Commission believes that, while Smith Barney may be correct in theory, as a practical matter, Smith Barney's solution will make enforcement of the rule much more difficult. It believes that the practical difficulties of enforcing the rule if it were amended as Smith Barney suggests outweigh any compliance burdens imposed by the amendment. The Commission thus believes that the need for a prophylactic provision also outweighs the concerns expressed by Arter & Hadden concerning the burden imposed upon branch managers.[13]

B. Designation as a Municipal Finance Professional

Chemical and Artemis also express support for requiring each person designated by a dealer as a municipal finance professional to retain this designation for two years after the last activity or position which gave rise to the designation. The Chemical Letter states that the two year designation period matches the two year disqualification length contained in rule G–37(b) and provides clarity.

NBD opposes this amendment. NBD states that this amendment will create an undue reporting burden and would be unworkable from a supervisory standpoint. The NBD Letter reasons that if the designated municipal finance professional left the firm at which the professional engaged in the activity that gave rise to the designation, then that firm no longer would maintain any supervisory control over that individual, and therefore, any political activities of the individual would no longer benefit that firm and would be impossible to monitor. The NBD Letter also argues that if an employee is transferred to another department, then supervisory authority is severed. NBD regards it as ''unlikely'' that an employee would be transferred to another department in order to circumvent rule G–37.

With respect to the issue of monitoring municipal finance professionals who have left a firm, the Commission notes that rule G–37 does not require a firm to monitor the activities of a municipal finance professional that it no longer employs. With respect to the issue of whether a firm receives any continuing benefits from a municipal finance professional no longer employed by that firm, the Commission believes that whether or not a firm benefits from the political activities of an individual that occur after the individual leaves the firm, or is transferred, a firm may continue to enjoy the benefits that flow from that employee's activities even after that employee left the firm or was transferred. Rule G–37 reflects a reasoned judgment that certain activities may corrupt the awarding of municipal securities business, not only at the time of the activity, but for a certain period of time thereafter.

C. Miscellaneous Comments

Chemical and Artemis expressed support for the remainder of the rule change.

The PSA believes that the MSRB should further amend rule G–37 to:

- establish a threshold percentage of commissions below which a registered representative would not be considered a municipal finance professional;
- establish guidelines concerning how frequently they must review their records to identify registered representatives as municipal finance professionals;
- clarify that the MSRB will not retroactively apply the municipal finance professional designation to persons who were not initially identified by the broker, dealer or municipal securities dealer as a registered representative, but subsequently engage in activities that would trigger application.
- codify procedures for brokers, dealers and municipal securities dealers to follow to ensure that municipal finance professionals are being identified.

The Commission believes that the MSRB may address these comments in the context of a separate proposed rule change filed with the Commission. It does not believe that these comments must be addressed in the context of this rule change.

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C)[14] of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission believes that the rule change is in the public interest and removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments: (i) tailor the application of rule G–37 to those persons who may be in a position to make political contributions for the purpose of influencing the awarding of municipal securities business by issuer officials; (ii) require disclosure of certain payments which may have the effect of influencing the awarding of municipal securities business; and (iii) eliminate the restrictions imposed by rule G–37 with respect to certain transactions and practices which are not likely to influence the awarding of municipal securities business by issuer officials.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–MSRB–94–14 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6029 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20941; No. 812–9232]

Security Benefit Life Insurance Company, et al.

March 6, 1995.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Security Benefit Life Insurance Company (''SBL''), T. Rowe Price Variable Annuity Account (''SBL Separate Account''), Pioneer National

[13] The Commission notes that the amendment does not add any compliance burden that is not imposed under the current version of rule G–37.

[14] 15 U.S.C. § 78*o*–4.

Life Insurance Company (''SBL–NY,'' together with SBL, the ''Insurance Companies''), T. Rowe Price Variable Annuity Account of First Security Benefit Life Insurance and Annuity Company of New York (''NY–Separate Account,'' together with SBL Separate Account, the ''Accounts'') and T. Rowe Price Investment Services, Inc. (''Investment Services'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2), and pursuant to Section 11 approving the terms of a payment arrangement.

SUMMARY OF APPLICATION: Applicants seek an order (1) pursuant to Section 6(c) of the 1940 Act, permitting the deduction of a mortality and expense risk charge from the assets of: (a) the Accounts in connection with the offer and sale of certain variable annuity contracts (''Current Contracts''); (b) the Accounts in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Current Contracts (''Future Contracts,'' together with Current Contracts, the ''Contracts''); and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Contracts; and (2) pursuant to Section 11 of the 1940 Act, approving the terms of a payment arrangement involving certain mutual funds and variable annuity contracts.

FILING DATE: The application was filed on September 16, 1994, and amended on February 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 31, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Roger K. Viola, Esq., Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636, and Nancy M. Morris, Esq., T. Rowe Price Investment Services, Inc., 100 East Pratt Street, Baltimore, Maryland 21202. Copies of Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1500 K Street, N.W., Suite 500, Washington, D.C. 20005 and Steven B. Boehm, Esq., Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, N.W., Suite 800, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Kevin Kirchoff, Senior Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. SBL is a mutual life insurance company organized under the laws of the State of Kansas. SBL–NY is a domestic stock life insurance company organized under the laws of the State of Kansas. All of SBL–NY's outstanding stock is owned by Pioneer National Corporation, a Kansas corporation (''PNC''), which is a wholly-owned subsidiary of Security Benefit Group, Inc., (''SBG''), a wholly-owned subsidiary of SBL. SBL–NY will be merged into a newly-formed New York insurance company in the near future with the resulting entity to be named the ''First Security Benefit Life Insurance and Annuity Company of New York'' for the purpose of marketing a form of the Contracts in New York.

2. The Accounts are separate investment accounts established by the Insurance Companies for the purpose of investing purchase payments received under the Contracts. Each of the Accounts is a unit investment trust which has filed a registration statement on Form N–4 under the Securities Act of 1933 to register the offering of the Contracts.

Each Account is currently divided into five Subaccounts that will invest exclusively in shares of the corresponding portfolio of one of the following mutual funds: (1) T. Rowe Price International Series, Inc.; (2) T. Rowe Price Equity Series, Inc.; and (3) T. Rowe Price Fixed Income Series, Inc. (collectively the ''Funds''). Each of the Funds is a Maryland corporation and is currently registered under the 1940 Act as an open-end management investment company. The shares of the Funds are purchased by the Insurance Companies for the Subaccounts at the Fund's net asset value per share.

The Insurance Companies may in the future establish additional separate accounts to support variable annuity contracts substantially similar in all material respects to the Contracts.

3. T. Rowe Price Associates, Inc. (''T. Rowe Price'') serves an investment adviser to each Fund, except the T. Rowe Price International Series, Inc. Rowe Price-Fleming International, Inc. (''Price-Fleming''), an affiliate of T. Rowe Price, serves as investment adviser to the T. Rowe Price International Services, Inc. Each of T. Rowe Price and Price-Fleming is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

4. Investment Services will be the principal underwriter of the Contracts. Investment Services is a wholly-owned subsidiary of T. Rowe Price. Investment Services is a broker-dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. Investment Services receives no compensation for acting as principal underwriter under distribution agreements with the Insurance Companies. Investment Services also is the distributor of shares of the T. Rowe Price Public Funds, currently consisting of 36 open-end management investment companies. Each such fund is offered directly to the public and is managed by T. Rowe Price, Price Fleming, or an affiliate thereof.

5. The Contracts are available for purchase as non-tax qualified retirement plans. The Contracts are also eligible for use in connection with tax qualified retirement plans that meet the requirements of Sections 403(b) and 408 of the Internal Revenue Code of 1986, as amended (the ''Code''). The minimum initial premium is $10,000 ($5,000 if made pursuant to an automatic investment program) to purchase a Contract in connection with a non-tax qualified retirement plan and $2,000 ($25 if made pursuant to an automatic investment program) to purchase a Contract in connection with a qualified plan. Subsequent premium payments are flexible, although they must be for at least $1,000 ($200 if made pursuant to a automatic investment program) for Contracts purchased in connection with a non-tax qualified retirement plan, and $500 ($25 if made pursuant to an automatic investment program) for Contracts purchased in connection with a tax qualified plan. The Insurance Companies may reduce the minimum premium requirements under certain circumstances, such as for group or sponsored arrangements.

6. Premiums that are intended to accumulate on a variable basis may be allocated to one or more of the

Subaccounts of the Accounts with respect to the Contracts. Premiums that are allocated to a Subaccount are invested exclusively in shares of the corresponding portfolio of the Funds. Amounts held in a Subaccount will increase or decrease in dollar value depending on the investment performance of the corresponding portfolio of the Fund in which the Subaccount invests. The Owner bears the investment risk for amounts allocated to a Subaccount.

Premiums that are intended to accumulate on a fixed basis may be allocated to the Insurance Company's Fixed Account. Amounts allocated to the Fixed Account earn interest at a guaranteed annual effective rate of at least 3%, compounded daily.

7. Contract owners may change the allocation of Contract Value up to six times a year. Additional changes in allocation may be made under allocation programs made available in connection with the Contracts. Contract owners may make partial withdrawals within limits and surrender their Contracts at any time before the annuity date. Each partial withdrawal must be for at least $500 and, after the withdrawal, the remaining value in the Contract must be at least $2,000.

8. Contract owners may apply their Contract Value to any of the several annuity options offered under the Contracts. Both fixed and variable options are available.

9. The Contracts also provide for the payment of a death benefit. If the Owner (or Annunitant, if the Owner is not a natural person) dies during the Accumulation Period, the Insurance Companies will pay death benefit proceeds to the Beneficiary upon receipt of due proof of the Owner's death and instructions regarding payment to the Beneficiary.

10. The death benefit proceeds will be the death benefit reduced by any outstanding Contract debt and any uncollected premium taxes. If the Owner dies during the Accumulation Period and the issue age of each Owner was 75 or younger on the date the Contract was issued, the amount of the death benefit will be the greater of (1) the Contract's value as of the date that due proof of death and instructions regarding payment are received by an Insurance Company at its Home Office, (2) the aggregate premium payments received less any reductions caused by previous withdrawals, or (3) the stepped-up death benefit. The stepped-up death benefit is (a) the highest death benefit on any annual Contract anniversary that is both an exact multiple of five and occurs prior to the oldest Owner attaining age 76, plus (b) any purchase payments made since the applicable fifth annual Contract anniversary, less (c) any withdrawals since the applicable fifth annual Contract anniversary. If the Owner dies during the Accumulation Period and the Contract was issued after age 75, the amount of the death benefit will be the Contract's value as of the date that due proof of death and instructions regarding payment are received by an Insurance Company at its Home Office. On the death of any Owner on or after the annuity payout date, any guaranteed payments remaining unpaid will continue to be paid to the Annuitant pursuant to the Annuity Option in force at the date of death. No death benefit will be paid if the Owner dies after the annuity payout date.

11. The Insurance Companies will deduct a daily charge from the assets of the Accounts for mortality and expense risks and costs assumed by them under the Current Contracts. The mortality and expense charge under the Current Contracts is equal to an annual rate not to exceed .55% of the average daily net assets of each Subaccount that funds the Contracts. The .55% charge consists of approximately .30% for mortality risk and .25% for expense risk and costs. This charge is intended to compensate the Insurance Companies for certain mortality and expense risks and costs the Insurance Companies assume in offering and administering the Current Contracts and in operating the Accounts.

The mortality risk borne by the Insurance Companies is the risk that the persons on whose lives annuity payments depend, as a group, will live longer than the Insurance Companies' actuarial tables predict. In this event, the Insurance Companies guarantee that annuity payments will not be affected by a change in mortality experience that results in the payment of greater annuity income than assumed under the Annuity Options in the Contract. The Insurance Companies also assume a mortality risk in connection with the death benefit under the Contract.

The Contracts do not include charges for administrative expenses. All administrative charges related to the Contracts are paid by the Insurance Companies. The Insurance Companies expect a profit from the mortality and expense risk charge that may be used to pay administrative costs. The expense risk borne by the Insurance Companies is that the anticipated profits from the mortality and expense risk charge will be insufficient to pay for the administrative expenses.[1]

12. The mortality and expense risk charge under the Current Contracts is equal to an annual rate of .55% of the average daily net assets of each subaccount that funds the Contracts. The Insurance Companies may issue Future Contracts with a mortality and expense risk charge not exceeding 1.00%.

13. The Insurance Companies may realize a profit from this charge to the extent it is not needed to cover mortality and administrative expenses, but the Insurance Companies may realize a loss to the extent the charge is not sufficient. The Insurance Companies may use any profit derived from this charge for any lawful purpose, including payment of any distribution expenses.

14. Contract purchasers and owners may own shares of a T. Rowe Price Public Fund(s), and may desire to transfer funds from a T. Rowe Price Public Fund(s) to a Contract as a premium payment. In addition, Contract owners may desire to invest proceeds from a redemption, withdrawal or surrender under the Contracts or annuity payments payable thereon, in shares of a T. Rowe Price Public Fund(s). Investment Services proposes to accommodate such investors with a payment arrangement facilitating such transfers. Use of this arrangement would be entirely elective; no Contract owner or purchaser would be required to use the payment arrangement to purchase a Contract or shares of a T. Rowe Price Public Fund.

15. Because neither the T. Rowe Price Public Funds nor the Contracts impose sales load charges, there is no possibility that any sales load would be deducted in connection with the application of redemption proceeds from a T. Rowe Price Public Fund to premium payments on a Contract, or the application of redemption proceeds or annuity payments from a Contract to the purchase of shares of T. Rowe Price Public Fund. However, applicable premium taxes may be deducted in connection with the first annuity payment or the payment of redemption proceeds under the Contract.

Applicants' Legal Analysis and Conditions

1. Applicants request an order of the Commission under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the

[1] Applicants have undertaken to amend their application during the notice period to include these representations.

deduction of a maximum charge of 1.00% for the assumption of mortality and expense risks from the assets of: (a) the Accounts in connection with the issuance of the Current Contracts; (b) the Accounts in connection with the issuance of any Future Contracts; and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that their request for exemptive relief for deduction of a maximum 1.00% mortality and expense risk charge from the assets of the Accounts, or any other separate account established by the Insurance Companies in the future, in connection with the issuance of Future Contracts, would promote competitiveness in the variable annuity contract market by eliminating the need for the Insurance Companies to file redundant exemptive applications, thereby reducing the Insurance Companies' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair the Insurance Companies' ability effectively to take advantage of business opportunities as they arise. Further, if the Insurance Companies were required repeatedly to seek exemptive relief with respect to the same issues regarding a mortality and expense risk charge addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions regarding a mortality and expense risk charge are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the maximum 1.00% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of similar industry products, taking into account such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the means of promotion, the market for the contracts, investment options under the contracts, and the tax status of the contracts. Applicants represent that the Insurance Companies will maintain at their home offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, their comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses. The Insurance Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Insurance Companies at their home offices and will be made available to the Commission. Applicants represent that Future Contracts will be offered only if the Insurance Companies conclude that the proposed distribution financing arrangement will benefit such Future Contracts and the Accounts or other separate accounts established in connection with their issuance and the Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by the Insurance Companies at their home offices and will be made available to the Commission.[2]

[2] Applicants have undertaken to amend their application during the notice period to include these representations.

7. Applicants also represent that the Accounts will invest only in underlying open-end management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not ''interested persons'' of such company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

8. Section 11(a) of the 1940 Act makes it unlawful, in relevant part, for a registered open-end investment company or any of its principal underwriters:

> To make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made.

9. Section 11(c) of the 1940 Act provides that, irrespective of the basis of exchange, subsection (a) shall be applicable:

> (1) to any offer of exchange of any security of a registered open-end investment company for a security of a registered unit investment trust * * *; and (2) to any type of offer of exchange of the securities of registered unit investment trusts * * * for the securities of any other investment company.

10. The Commission has promulgated Rules 11a–2 and 11a–3 under Section 11, each of which permits the making of certain exchange offers without prior Commission approval provided that specified conditions are met.

Rule 11a–2 permits offers of exchange to be made by registered insurance company separate accounts to holders of variable contracts supported by separate accounts having the same or an affiliated insurance company depositor or sponsor, provided that, with respect to variable annuity contracts, (1) the exchange is made on the basis of the relative net asset values of the securities to be exchanged (less any administrative fee disclosed in the offering account's registration statement); and (2) any sales loads which may be imposed are calculated and deducted in accordance with the terms and conditions of Rule 11a–2.

Rule 11a–3 permits a fund or its principal underwriter to make exchange offers to shareholders in that fund or another fund in the same group of funds

on a basis other than net asset value. The rule permits the imposition of certain sales loads and/or other fees in connection with the exchange, provided that (1) any administrative fee or scheduled variation thereof is applied uniformly to all security holders of the specified class; (2) any redemption fee or scheduled variation thereof is applied uniformly and does not exceed the redemption fee applicable to the redemption of the exchanged security in the absence of an exchange; (3) adequate disclosure is made with respect to the fees charged and the limitations and any rights of termination applicable to an exchange offer; and (4) sales loads are calculated and deducted in accordance with the terms and conditions of Rule 11a–3.

Rule 11a–2 thus permits offers of exchange between insurance company separate accounts having the same or affiliated depositor or sponsor and Rule 11a–3 permits certain exchange offers between funds in the same group of funds. However, neither rule permits exchanges between a publicly-offered management investment company and a separate account.

11. Applicants state that, because neither the T. Rowe Price Public Funds nor the Contracts impose sales load charges, no sales load will be deducted in connection with the application of redemption proceeds from a T. Rowe Price Public Fund to premium payments on a Contract, or the application of redemption proceeds or annuity payments from a Contract to the purchase of shares of T. Rowe Price Public Fund. Thus, there is no possibility of the abuse contemplated by Section 11(a) (*i.e.*, offers of exchange made solely for the purpose of assessing additional selling charges). The payment arrangement is consistent with the intent and purposes of Rules 11a–2 and 11a–3 and would satisfy the conditions established by those rules if the Applicants were eligible to rely on them.

12. Applicants believe that exemptive relief is necessary, appropriate and fully consistent with the purpose of Section 11 of the 1940 Act, and that the payment arrangement would not result in any of the abuses the section was enacted to prevent. The payment arrangement provides substantial benefits to Contract purchasers and owners by providing a convenient means of making premium payments and of investing proceeds from a redemption, withdrawal or surrender under the Contracts. The payment arrangement is consistent with the protection of investors and with the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–6030 Filed 3–10–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airbus Industrie Proposal To Establish a Maximum Passenger Capacity for the Model A321 Airplane Without Conduct of a Full-Scale Evacuation Demonstration; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) for the purpose of soliciting and reviewing information from the public on a proposal by Airbus Industrie to establish a maximum passenger capacity for the model A321 airplane without conduct of a full-scale evacuation demonstration. Interested parties are invited to make presentations or submit material for the record.

DATES: The public meeting is scheduled for Friday, April 14, 1995. On-site registration will begin at 7:30 a.m., and the public meeting will begin at 8:30 a.m.

REGISTRATION: Persons planning to attend the public meeting should preregister by contacting the person identified later in this notice as the contact for further information. Arrangements for oral presentations must be made by March 25, 1995.

ADDRESSES: The public meeting will be held at the Holiday Inn, SeaTac International Airport, 17338 International Blvd., Seattle, Washington 98188.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Transport Standards Staff, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a public meeting to be held on April 14, 1995 at the Holiday Inn, SeaTac International Airport in Seattle, Washington. The purpose of this meeting is to hear comments from the general public regarding a proposal by Airbus Industrie to establish the maximum passenger capacity for the A321 airplane, without conduct of a full-scale evacuation demonstration. This proposal includes utilization of previous full-scale evacuation data from a similar airplane model, in combination with partial evacuation testing and analysis. This approach would represent a departure from previous FAA-approval methods for new airplane models, although the European Joint Aviation Authorities have already approved the airplane using this method. The A321 is a derivative of the A320 airplane, and includes replacement of the two Type III overwing exits with two pairs of improved Type I exits. While this subject is being addressed by the Emergency Evacuation Issues Group of the Aviation Rulemaking Advisory Committee (ARAC), that group has not yet reached a consensus on the procedures to follow in such a case. In the absence of a formal recommendation from ARAC, the FAA is inviting the interested public to comment on the Airbus proposal. The FAA will consider information presented at the public meeting in the course of making its decision on the acceptability of the Airbus proposal.

The agenda for the meeting will include:

Regulatory Background
Certification Test Procedures
Airbus Presentation of Proposed Compliance Method
Presentations from the Public

Attendance is open to the interested public, but will be limited to the space available.

Requests To Be Heard

Persons planning to present data or comments at the public meeting are requested to provide the FAA an abstract of their presentation by March 25, 1995. The abstract should include an estimate of the time needed to make the presentation, and should be mailed to the person identified earlier in this notice as the contact for further information. Following each presentation, a discussion period will be allowed and all persons will be given the opportunity to open discussions on the presentation.

Public Meeting Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at the Holiday Inn, SeaTac at a single room rate of $74.00 plus tax. Persons wishing to attend the public meeting are encouraged to make reservations by March 23, 1995, by contacting the Hotel direct at 206–248–1000. Be sure to identify yourself as an FAA public meeting attendee to receive this special rate.

Persons who plan to attend the public meeting should be aware of the following procedures which are established to facilitate the workings of the meeting.

1. The meeting will be open on a space available basis to all persons registered. If practicable, the meeting will be accelerated to enable adjournment in less than the time scheduled.

2. The meeting will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcribe will be docketed.

3. The FAA will consider all materials presented at the meeting by participants. Position papers and other handout material may be accepted at the discretion of the chairperson. Enough copies should be provided for distribution to all conference participants.

4. Statements made by FAA participants at the meeting will not be taken as expressing final FAA positions.

Issued in Renton, Washington, on March 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–5872 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Motor Carrier Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Motor Carrier Advisory Committee. The Committee acts in an advisory capacity to the Federal Highway Administrator. It makes recommendations intended to improve the safety and productivity of the motor carrier industry and the effectiveness of the FHWA's programs and policies. The Committee reviews research projects, regulations, and programs including those involving commercial motor vehicle licensing and taxation, uniformity, and safety. The focus of the meeting will be issues and concerns of the motor carrier community, including: (1) Regulatory Updates, (2) Overview of the Truck and Bus Safety Summit, and (3) Intelligent Transportation Systems.

DATES: The meeting will be from 8:30 a.m. to 4:30 p.m. on April 4, 1995, and from 8:30 a.m. to 12:00 p.m. on April 5, 1995.

ADDRESSES: Federal Highway Administration, 400 Seventh Street, SW., Room 2201, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Rea, HMT–2, Room 3103, 400 Seventh Street, SW., Washington, DC, 20590; (202) 366–1724.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–6059 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–22–P

[FHWA Docket No. 95–4]

Highway Investment Needs at and Approaching International Ports of Entry

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This document requests comments on a study of highway investment needs at and approaching international ports of entry. This study would supplement an earlier report on international ports of entry and transportation corridors for North American trade which the Department of Transportation (DOT) submitted to the Congress in January 1994, in accordance with sections 1089 and 6015 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. The Congress has asked the FHWA to conduct a study to review its distribution of funds to border regions, to develop and report recommendations to improve the distributions of such funds, to give high priority to the transportation needs of border regions, and to work with State and local governments in border regions (including requests for information about funding distribution) to assist them with planning. This will be a two-part study. The States have asked for the expansion of this study to include other international ports of entry. This will be the second study conducted by the FHWA.

DATES: Comments must be received on or before April 1, 1995, for inclusion in part one of the report to the Congress on international border crossing ports of entry; on or before July 31, 1995, for the second part of the border crossing report; and by September 1, 1995, for a subsequent report which will cover other maritime, rail, air, and intermodal international ports of entry. This docket will remain open indefinitely to accept comments on the reports after they are issued.

ADDRESSES: Submit written, signed comments to the FHWA Docket No. 95–4, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington DC 20590. Interested parties are requested to identify themselves for inclusion on a mailing list for future notifications concerning the study by providing their names and mailing addresses to the above docket. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Strawder, Office of Policy Development, Federal Highway Administration (HPP–22), 400 Seventh Street, SW., Washington, D.C. 20590, Attention: Highway Investment Study (telephone 202/366–6949, fax 202/366–3297).

SUPPLEMENTARY INFORMATION:

Background

The conference report (H.R. Conf. Rep. No. 752, 103d Cong., 2d Sess. (1994)) of the Department of Transportation's Appropriations Act for Fiscal Year 1995 (Pub. L. 103–331, 108 Stat. 2471) includes a discussion of and requirements related to infrastructure issues of the border regions.

The congressional report references an earlier report prepared by the FHWA and submitted by the Secretary of Transportation to the Congress in January 1994, in accordance with section 1089, Feasibility of International Border Highway Infrastructure Discretionary Program, and section 6015, Border Crossings, of the ISTEA. The report is entitled ''Assessment of Border Crossings and Transportation

Corridors for North American Trade.'' A copy of the Executive Summary of the Report follows as background. A list of the detailed reports which resulted from that study and are available from the National Technical Information Service is also included.

In the conference report, Congress has asked the FHWA to review its distribution of funds to border regions, including reexamination of a dedicated border infrastructure investment program; to develop and report recommendations to improve the distribution of such funds; to give high priority to the transportation needs of border regions, and to work with State and local governments in border regions, including requests for information about funding distribution, to assist them with planning. The House Appropriations Committee requested the recommendations to improve the distribution of the funds by May 1, 1995. A draft of that report is expected to be completed by March 1, 1995. A second phase addressing broader issues and including international ports of entry will be completed by the end of calendar year 1995.

Through the American Association of Highway and Transportation Officials Planning Committee, the States will be working with the FHWA to develop the data to address these congressional concerns for the land border crossing and the highway infrastructure investment issues associated with all international ports of entry. Comments must be received on or before April 1, 1995, for inclusion in part one of the report to the Congress on international border crossing ports of entry; on or before July 31, 1995, for the second part of the border crossing report; and by September 1, 1995, for a subsequent report which will cover other maritime, rail, air, and intermodal international ports of entry. This docket will remain open indefinitely to accept comments on the reports after they are issued.

Policy Questions and Comments

Responses to the following questions are solicited from any parties interested in highway infrastructure issues associated with border crossings and other international ports of entry. The following key policy questions will be considered:

1. What are the current priority highway investments at or in the vicinity of land border crossings or other international ports of entry?

2. What factors define a high priority highway investment at or in the vicinity of land border crossings or other international ports of entry?

3. Historically, how have Federal funds been distributed to the border regions?

4. (a) If there were no dedicated highway infrastructure investment program for roads associated with international ports of entry and the State and local governments made decisions through their usual planning processes, what could be done to assure that each State's transportation plan included consideration of highway or other access to the international ports of entry? (b) If there were a dedicated infrastructure investment program for highways associated with international ports of entry, how should it be structured for highways and for other surface transportation modes?

5. Comment on the following proposed criteria for defining roadway segments that provide access to or egress from international ports of entry. These roadway segments are often referred to as being ''at and/or approaching the international ports of entry.'' The criteria are intended to provide uniformity in the data used in analysis and in developing highway investment strategies. The criteria described are for international ports of entry for which the U.S. Customs Service has listed a valid Automated Commercial System District/Port Code. These ports of entry may be for land (highway and rail), water, or air.

Proposed Criteria

To be considered as a highway segment providing access to or egress from an international port of entry one of the following three criteria must apply:

1. The roadway segment from the international port of entry to its intersection with the first principal arterial.

2. The roadway segment(s) on which half of the traffic is destined for or is coming from the international port of entry.

3. The roadway segment(s) carrying more than half of the traffic that crossed or entered at the international port of entry.

Authority: Secs. 1089 and 6015, Pub. L. 102–240, 105 Stat. 1914 (1991); 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

Assessment of Border Crossings and Transportation Corridors for North American Trade—Executive Summary of Report to Congress Pursuant to Intermodal Surface Transportation Efficiency Act of 1991—Public Law 102–240, Sections 1089 and 6015

Authority

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240

ISTEA Section 1089: Feasibility of International Border Highway Infrastructure Discretionary Program

(a) The Secretary shall conduct a study of the advisability and feasibility of establishing an international border highway infrastructure discretionary program. The purpose of such a program would be to enable States and Federal agencies to construct, replace, and rehabilitate highway infrastructure facilities at international borders when such States, agencies, and the Secretary find that an international bridge or a reasonable segment of a major highway providing access to such a bridge

(1) is important;

(2) is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence;

(3) poses a safety hazard to highway users;

(4) by its construction, replacement, or rehabilitation, would minimize disruptions, delays, and costs to users; or

(5) by its construction, replacement, or rehabilitation, would provide more efficient routes for international trade and commerce.

(b) Report.—Not later than September 30, 1993, the Secretary shall transmit to Congress a report on the results of the study conducted under this section, together with any recommendations to the Secretary.

ISTEA Section 6015. Border Crossings

(a) Identification.—The Secretary, in cooperation with other appropriate Federal agencies, shall identify existing and emerging trade corridors and transportation subsystems that facilitate trade between the United States, Canada, and Mexico.

(b) Priorities and Recommendations.—The Secretary shall investigate and develop priorities and recommendations for rail, highway, water, and air freight centers and all highway border crossings for States adjoining Canada and Mexico, including the Gulf of Mexico States and other States whose transportation subsystems affect the trade corridors. The recommendations shall provide for improvement and integration of transportation corridor subsystems, methods for achieving the optimum yield from such subsystems, methods for increasing productivity, methods for increasing the use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries.

(c) Minimum Elements.—The highway border crossing assessment under this section shall at a minimum—

(1) determine whether or not the border crossings are in compliance with current

Federal highway regulations and adequately designed for future growth and expansion;

(2) assess their ability to accommodate increased commerce due to the United States-Canada Free Trade Agreement and increased trade between the United States and Mexico; and

(3) assess their ability to accommodate increasing tourism-related traffic between the United States, Canada, and Mexico.

The review shall specifically address issues related to the alignment of United States and adjoining Canadian and Mexican highways at the border crossings, the development of bicycle paths and pedestrian walkways, and potential energy savings to be realized by decreasing truck delays at the border crossings and related parking improvements.

(d) Consultation.—In carrying out this section, the Secretary shall consult with appropriate Governors and representatives of the Republic of Mexico and Canada.

(e) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall report to Congress and border State Governors on transportation infrastructure needs, associated costs, and economic impacts identified and propose an agenda to develop systemwide integration of services for national benefits.

Assessment of Border Crossings and Transportation Corridors for North American Trade—ISTEA Section 1089 and Section 6015 Report to Congress

Executive Summary

Congressional Mandate

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, directs the Secretary of Transportation to conduct two studies relating to the movement of international trade.

Section 1089 calls for a study of the ''advisability and feasibility of an international border highway infrastructure discretionary program.''

Section 6015 calls for the Department of Transportation (Department) to conduct an assessment of existing and emerging international trade corridors between the United States, Mexico, and Canada, and to make recommendations on how to improve the integration and operation of trade-related transportation subsystems. Section 6015 requires that Mexico and Canada be consulted; both countries have cooperated in the study effort.

While the Congressional mandate does not specifically mention the North American Free Trade Agreement (NAFTA), Section 6015 stipulates that the ''review shall specifically address issues related to the alignment of United States and adjoining Canadian and Mexican highways at the border crossings.'' The legislation also requires an assessment of the ability of highway border crossings to ''accommodate increased commerce due to the United States-Canada Free Trade Agreement and increased trade between the United States and Mexico.''

Much of the motivation for the study stems from long standing complaints of lengthy delays and backups of trucks and cars at international border crossings. There is a concern that trade among the three North American nations, which has increased significantly over the past seven years, may outstrip the ability of the nations' transportation systems to handle additional traffic, further exacerbating border congestion. The study team concluded that there are several factors involved in border congestion, and a number of difficulties in assessing the condition and future of trade corridors.

Study Approach and Methodology

The study team examined the border crossings and the access channels leading to them. The team visited most of crossings on both the northern and southern borders and drove over and observed traffic on many of the access roads. With assistance from the U.S. Customs, the team observed cargo and passenger clearance operations and transportation operations at the border crossings.

In addition, the team conducted a series of public outreach and information gathering meetings at locations throughout the United States. Participants at these meetings included shippers, carriers, customs brokers, and officials from concerned Federal, state, provincial, and local governments. Much of the information gathered in these sessions was anecdotal in nature, and reflective of local perspectives. However, there was value in learning the views of border communities and understanding the effects they perceive their proximity to heavily travelled border crossings have on local and regional transportation systems. Following completion of these studies and at the invitation of the Federal governments of Canada and Mexico, meetings were also held in Canada and Mexico to gain the perspectives of interested parties in those countries. Results of these meetings will be reported separately.

Statistical data on cross-border trade gathered from sources in all three countries were also used to the extent possible in assessing trade patterns and conditions at the borders. The statistical data, however, suffer from a number of shortcomings. The U.S. Census Bureau, for example, has not historically classified cross-border transits by mode of transportation. Ideally, transportation statistics are compiled in terms of ton miles or numbers of vehicles, but data were not readily available in that form. Furthermore, the three countries involved do not compile data in a standard way.

Current U.S. Trade With Canada and Mexico

Canada is the United States' largest trading partner. In 1992, merchandise trade between the two countries totaled $189 billion, with U.S. imports exceeding exports by about 9 percent. Trade between the United States and Canada is growing. Between 1985 and 1992, the value of U.S.-Canadian trade increased by about $33 billion, or 21 percent. Trade with Canada currently accounts for about 20 percent of U.S. total merchandise trade with the world.

Total trade with Mexico has even stronger growth, fueled by Mexico's liberalization of tariff and trade restrictions in 1986. From 1986 through 1992, total trade grew from approximately $30 billion to $76 billion, an increase of 153 percent. Mexico is now the United States' third largest export market; U.S. exports increased from $12.4 billion in 1986 to $40.6 billion in 1992.

North American Free Trade Agreement

The United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA) on December 17, 1992. The NAFTA will create the largest free trade zone in the world, comprising over 360 million consumers with a combined annual output of $6 trillion. Through progressive reductions, the NAFTA eliminates all tariffs on industrial and agricultural goods produced by the three countries. Approximately 50 percent of U.S. exports to Mexico will enter Mexico completely duty-free on the day the agreement enters into force. Mexican tariffs on all remaining industrial products and most agricultural items will be phased out over 5 to 10 years. Reductions in tariffs on trade between the United States and Canada were negotiated in 1987 and incorporated into a U.S.-Canada Free Trade Agreement. This agreement remains in effect, augmented by additional changes included in the NAFTA.

Judging from recent experience, the NAFTA should result in further increases in U.S. trade with Mexico. For example, the U.S. Department of Commerce estimates that the NAFTA will result in increases in U.S. automotive exports to Mexico of up to $1 billion in the NAFTA's first year alone due to the lowering of various Mexican tariff and non-tariff barriers.

The dramatically increased trade with Mexico over the past seven years has aggravated conditions at an already congested U.S.-Mexican land border. Similar problems exist on the U.S.-Canadian border as well. While the NAFTA would help boost trade among the three countries, the degree to which it would increase border congestion is unclear. The NAFTA will eliminate a number of transportation practices and restrictions currently in place that contribute significantly to congestion at land border crossings. At some crossings, as many as 20 percent of commercial vehicles cross empty because of current limitations on access in both countries. Thus, while the NAFTA's tariff reduction provisions will tend to boost trade and vehicle traffic across the southern border, the NAFTA's provisions will also tend to reduce the number of empty commercial vehicles crossing the border.

Both Mexico and the United States restrict access for motor carriers from the other country. U.S. trucks are prohibited from crossing the border into Mexico, for example, while Mexican trucks are permitted in the United States only as far as the commercial zones along the border which are designated by the Interstate Commerce Commission.

The NAFTA creates a timetable for the removal of barriers to the provision of cross-border motor carrier services, thereby permitting international passengers and cargo to be transported more efficiently. The NAFTA's transportation provisions will eliminate the need to transfer cargoes and trailers at the border, thereby reducing the number of trucks that cross the border empty and eliminating a significant cause of congestion at border ports of entry.

Patterns of Trade

Canada

The largest concentration of trade with Canada, both to and from a single region of the United States, is in the Great Lakes area, including Wisconsin, Michigan, Ohio, Indiana, and Illinois. In 1992, this region alone accounted for 39 percent of the value of U.S. imports from Canada and 36 percent of the value of U.S. exports. Much of this is accounted for by the high value automobile trade focused between Michigan and Ontario.

The second largest regional concentration of trade is in the mid-Atlantic area, which includes New York, New Jersey, and Pennsylvania. The third largest is in the New England states. Together, states in the three eastern regions account for 65 percent of Canada's exports to the United States and 60 percent of U.S. exports to Canada when measured as value of trade.

Mexico

The largest concentration of trade with Mexico to date has been in the southern border region. Texas dominates U.S. export trade with Mexico, with over $17 billion in 1992. California is second, followed by Arizona, Michigan, and Illinois. The principal destinations in the United States for imports from Mexico are Texas, California, and Michigan.

Transportation Patterns

In terms of value, most cargo transported between the United States and Canada and the United States and Mexico travels by highway or rail—80.2 percent of total U.S.-Canadian trade in 1992; 86 percent of total U.S.-Mexican trade in 1992. Between the United States and Canada, movements by air account for about 10 percent of cargo transported. Between the United States and Mexico, water transportation accounts for a 10 percent share of total cargo transported in terms of value.

On the northern border, the eastern ports of entry in Michigan, New York, and New England handle more than 80 percent of cross-border traffic. Of the remaining traffic, the Washington ports of entry handle about 70 percent of northwestern cross-border trade and highway traffic volume. Along the U.S.-Mexico border trade flow is heavily concentrated at seven major border ports of entry—El Paso, Otay Mesa, Laredo, Brownsville, Calexico, Nogales, and Hidalgo. The busiest port of entry for commercial trucks is at El Paso; the busiest port of entry for rail traffic is Laredo.

Trade Flow Transportation Patterns

The report addresses trade flow patterns rather than trade corridors for the major areas of North America. The study team did not find a firm definition of what constitutes a trade corridor for all modes of transportation.

Most trade flow patterns between the United States and Mexico and the United States and Canada can best be described as intraregional in nature. The communities on both sides of the northern and southern borders have developed regional economies that are truly binational.

There are high levels of cross-border commuting, shopping, and movement of goods and services to support these binational regional economies. These movements are best accommodated by regional transportation systems.

In addition, there are trade movements between production regions and between production and consumption regions. Often, these areas are far apart; occasionally, the trade is between contiguous regions, such as between the densely populated manufacturing sections of the eastern United States and Canada.

Eastern U.S.-Canadian Trade Flow Transportation Patterns

Groups of individual land border crossings are called frontiers or gateways in this report. The Niagara and Michigan frontiers are at the center of the major trade between the United States and Canada. In addition, these frontiers account for the largest portion of U.S.-Mexican trade that does not originate in Texas or California. While the largest portion of freight to and from Mexico crosses the Texas border at Laredo, it is carried on transportation routes originating in Montreal, Toronto, Buffalo, southeast Michigan, and Chicago. These routes are critical to an integrated North American market.

Western U.S.-Canadian Trade Flow Transportation Patterns

The pattern of U.S.-Canadian trade in the west tends to be organized into three somewhat distinct cross-border trading subregions: the Pacific Northwest, the Rocky Mountains, and the Upper Plains. The flow of trade at the border is focused through relatively few major crossings. While some dominant interregional flows are associated with trade to and from these border gateways, trade flows beyond the border are highly diffuse, with as many east-west flows as north-south flows to and from the border.

U.S.-Mexican Trade Flow Transportation Patterns

Three existing and two emerging trade areas, linked to major border ports of entry, were identified: South Texas, West Texas, New Mexico, Arizona, and California. These are not broad continental corridors in the sense that they connect regions of the United States with regions in Mexico or regions in Mexico with regions in Canada. Rather, they tend to be the funnels through which trade and people pass. Beyond the border region, trade flows in a more diffuse pattern. In addition to serving as convenient crossing points for binational trade, these areas also serve local economies of integrated services, industries, and trade.

Principal Findings

• Volumes of trade and traffic will continue to increase among the three North American countries. The traffic growth rate at both the U.S.-Canadian and U.S.-Mexican borders has been increasing at rates significantly higher than average national growth rates, particularly at the southern border.

• Passenger traffic through U.S.-Canadian ports of entry in the eastern region is projected to increase at a rate of 6.2 percent a year through 1997. Total trade through eastern ports of entry is projected to reach $160 billion by 1997, resulting in an increase in commercial traffic to between 8 and 9 million vehicles or an average annual growth rate of between 5 and 7 percent through 1997.

• U.S.-Canadian trade processed through border ports of entry in the western region is also expected to increase. U.S. exports to Canada are projected to increase by 16 to 24 percent in the next ten years. Canada exports to the United States are projected to increase 24 to 34 percent over the same period.

• With ratification of the NAFTA, the projected increase in trade between the United States and Mexico will be much larger. U.S. exports to Mexico are projected to increase between 65 and 70 percent by 2000. Mexican exports to the United States through the South Texas ports of entry are projected to increase 120 percent; exports through the West Texas-New Mexico ports of entry should increase by 110 percent; exports through Arizona are projected to grow by 85 percent; and exports through California are projected to increase by over 200 percent.

• The facilities immediately at the border crossings, principally bridges and tunnels plus facilities housing Federal inspection agencies (the U.S. Customs Service, the U.S. Immigration and Naturalization Service, the U.S. Department of Agriculture and their Mexican and Canadian counterparts), are adequate and will remain so for the foreseeable future, even with the anticipated increased in trade. The General Services Administration (GSA) is completing a $364.5 million Southwest Border Capital Improvement Program that will enable southern border crossing facilities to accommodate 8.4 million trucks annually. Approximately 2.3 million trucks entered the United States from Mexico during Fiscal Year 1992.

• Arterials leading to and from border crossing sites are part of the border approach infrastructure. Today they are under stress and will be hard pressed to handle significantly greater amounts of cross-border traffic. The GSA improvements cited above are confined to facilities at border crossings which handle traffic and inspection. The GSA improvements do not extend beyond the immediate crossing area to roads and other transportation channels. These arterials connect border crossings to the main interstate and interregional transportation system within the United States. They are badly in need of repair and upgrading.

• In addition to needed improvements in access to the border crossing points, some incremental improvements to transportation systems in the United States may be necessary to handle increases in both domestic and international trade. These include improvements in access to inland ports, seaports, airports, and intermodal transfer facilities.

• Communities that adjoin busy international border crossings face special problems resulting from the concentration of trade-related traffic, including congestion of local arterials with accompanying delays in travel times for local residents and deterioration of air quality, safety risks associated with heavy vehicle traffic, and increased deterioration of highway infrastructure.

• Border states, in distributing Federal highway funds, seem not to have allotted sufficient funds to border communities for improvements to border crossing approaches. The reason, in some cases, is because of competing priorities within states and in other cases because of legal limitations prior to ISTEA on the use of such funds for access roads to certain crossings (e.g. toll bridges). New sources of infrastructure funding and improved methods for its allocation appear necessary.

• A significant proportion of the delays at border crossings are not due to a lack of adequate infrastructure, but is caused by volume of trade, by complexities of inspection requirements, and by less than optimal traffic management and cargo clearance procedures. The responsibilities of the inspection agencies require that many vehicles undergo lengthy, thorough inspections. Inadequate or incomplete paperwork accompanying cross-border shipments is common and constitutes another source of delay. Improvements appear to be needed in a combination of partnerships and technology applications to resolve some delay problems.

• Inspection agency staffing shortages can lead to excessive waiting time at border crossings. Traffic at most crossings is typically concentrated during peak hours, and border facilities often are idle for long periods during off-peak hours. More efficient use of border facilities could spread traffic over a longer period during the day, and thus alleviate some congestion.

• Policies and practices of foreign governments often contribute to congestion at the border. For example, inspection agencies on both sides of the border work different hours.

• Infrastructure and facilitation planning for major border crossings is fragmented and inadequate. The Federal government maintains an interagency group that coordinates review of proposals for additional crossings on the southwest border, but it does not deal with border communities or with planning of ancillary roadway or other needs beyond the crossings themselves. Adequate planning will require improved coordination among public and private entities, and among Federal, state, and local governments. Such planning should be binational and applied to both the northern and southern borders. The Federal Government should have the lead role as regards the involvement of foreign government entities. The Federal Government should also take on a leadership role as facilitator and convener of the mix of domestic government entities.

• There is insufficient linkage between available data on trade and transportation to permit the establishment of a firm definition of what constitutes existing or emerging international trade corridors for all modes of transportation.

Principal Recommendations

Transportation Infrastructure Investment—Section 1089 of the ISTEA directs the Department to evaluate the feasibility and advisability of establishing a discretionary border infrastructure investment program. While the Department is certainly capable of implementing such a program if it were established by the Congress, we do not believe it to be an advisable course of action. Even though the Department finds that investment is needed to address deficiencies in highway approaches to ports of entry and intermodal facilities, a number of alternative actions to the discretionary program are recommended:

• Fully fund the ISTEA to provide additional resources for states to allocate to trade-related and other high priority projects.

• With state and local governments, private financial institutions, carriers, and other private interests, develop a

range of funding options for infrastructure improvements, emphasizing existing Federal, non-Federal, and potential private sources. Identify, and eliminate wherever possible, impediments in Federal programs to innovative public/private collaborative efforts.

• As part of a future surface transportation authorization bill, develop Federal-aid program options to improve transportation infrastructure related to international trade, including border approach roads and connections to port, airport, and other intermodal facilities.

Border Station Congestion—The Department will support a task force or multi-task forces composed of Federal, state and local government agencies, and the private sector to address congestion at border crossings in general or at specific gateways or crossings. The purpose of the task force(s) is to identify critical border initiatives and to aggressively promote the use of new technologies and other non-capital intensive methods of facilitating the movement of people, cargo, and vehicles through major border crossings. Any initiatives should be closely coordinated with the Mexican and Canadian governments. A limited number of pilot projects could be undertaken through a competitive process to address congestion at various gateways. Funding for these projects could include a variety of Federal, state, local or private resources.

Transportation Planning and Data Needs—To assure that planning for future border trade-related infrastructure and technology requirements for all modes is included in state and national planning processes, the Department of Transportation and other Federal agencies should establish binational planning zones to engage in an integrated binational planning process. Planning for infrastructure and technology improvements in these zones would be coordinated with Federal, state, local, and private sector organizations that would identify improvement priorities. Cross-border consultation and coordination would be an integral part of the overall process.

To further assist in future border region and trade corridor transportation system planning, it is advisable to develop and implement a program for improving methods of collecting and analyzing data on cross-border trade and traffic flows.

These detailed reports are (where PB numbers are listed) or will be available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4634. All reports are numbered FHWA-PL–94–009-xx. The suffix (xx) is shown following the title listed below.

Title	PB
ASSESSMENT OF BORDER CROSSINGS AND TRANSPORTATION CORRIDORS FOR NORTH AMERICAN TRADE: REPORT TO CONGRESS	94–215806
ISTEA SECTION 1089 STUDY:	
Feasibility Study for an International Border Highway Infrastructure.	
Discretionary Program (01)	94–214319
ISTEA SECTION 6015 STUDY:	
SOUTHEAST:	
An Assessment of the Adequacy of East Coast and Gulf of Mexico Port Infrastructure to Accommodate Trade with Mexico. (02)	95–124111
U.S. Border Crossings with Canada and Mexico-Port Facilities, Inventory, and Constraints. Volume 1 (03)	95–124228
U.S. Border Crossings with Canada and Mexico-Port Facilities, Inventory, and Constraints. Volume 2. (04)	95–112215
NORTHEAST:	
An Assessment of the Adequacy of U.S.-Canadian Infrastructure to Accommodate Trade through Eastern Border Crossings. (05)	95–112041
Appendices:	
1. Descriptive Profiles of Maine Frontier. (06)	95–106860
2. Descriptive Profiles of Montreal South Frontier. (07)	95–112223
3. Descriptive Profiles of Eastern New York Frontier. (08)	95–112231
4. Descriptive Profiles of Niagara Frontier. (09)	95–112249
5. Descriptive Profiles of Michigan Frontier. (10)	95–112256
Summary of International Border Crossings Roundtable Meeting Held in Buffalo, New York, June 7, 1993. (11)	95–124194
Summary of International Border Crossings Roundtable Meeting Held in St. Louis, Missouri, June 9, 1993. (12)	95–124178
Summary of International Border Crossings Roundtable Meeting Held in Norfolk, Virginia, June 11, 1993. (13)	95–124186
WEST:	
Making Things Work: Transportation and Trade Expansion in Western North America	
Volume 1: A Summary Report. (14)	95–141263
Volume 2: Transportation and Trade Expansion in Western U.S. and Canada. (15)	95–112264
Volume 3: Transportation and Trade Expansion between the U.S. and Mexico. (16)	95–122891
Volume 4: Profiles of Western U.S.-Canada Border Crossings. (17)	94–192218
Volume 5: Profiles of U.S.-Mexico Border Crossings. (18)	95–122453
Volume 6: Reaching Out: A Compendium of Stakeholder Views. (19)	95–106852
Trade and Transportation in the Intermountain West. (20)	95–112066
U.S.-Mexico Transportation: A Trade Perspective (21)	95–124236
Western U.S.-Canada Trade and Transportation Perspectives from the Northern Border. (22)	95–112272
Western U.S.-Mexico Trade and Transportation Perspectives from the Southern Border. (23)	95–123949
Future Assessment of North American Border: Perspectives on Key Factors Affecting North American Trade and Transportation. (24)	95–106837
Volume 7: Commissioned Special Reports. (25)	95–
Disparities in the Law and Practice of Surface Transportation of Goods between the U.S. and Mexico. (26)	95–142733
Financing Options for U.S.-Mexico Border Transportation Projects. (27)	95–106845
Transportation Technology Trends and North American Trade. (28)	95–112280
Case Study: The Sweetgrass, Montana and Coutts, Alberta Border Crossing. (29)	95–112298
Working Paper on Trends in International Trade and Impacts on North American Transportation. (30)	94–192226
Working Paper on the Impact of Expanded U.S.-Mexico Trade on the Western States (31)	95–112306
Section 6015 Study: Results of the Futures Assessment Process. (32)	95–112314

Title	PB
Future Assessment Reference Book, Whitefish, Montana, July 8–9, 1993. (33)	95–123816
Future Assessment Workbook, Whitefish, Montana, July 8–9, 1993. (34)	95–123824
Future Assessment Reference Book, New Orleans, Louisiana, July 21–22, 1993. (35)	95–123832
Future Assessment Workbook, New Orleans, Louisiana, July 21–22, 1993. (36)	95–123840
Future Assessment Reference Book, Detroit, Michigan, July 12–13, 1993. (37)	95–123857
Future Assessment Workbook, Detroit, Michigan, July 12–13, 1993. (38)	95–
Future Assessment Reference Book, Tucson, Arizona, July 23–24, 1993. (39)	95–123865
Descriptive Report on Trade and Transportation Patterns in the Western U.S.-Canada Region. (40)	95–123873
Descriptive Report of Cross-border Traffic and Transportation in the Western U.S.-Canada Region. (41)	95–112322
Working Paper on Intermodal Requirements on the U.S.-Canadian Border in Western North America. (42)	95–112881
Working Paper on the Role of Government in Trade and Transportation between U.S.-Canada in Western North America. (43)	95–144622
Working Paper Analysis of Sub-Regional Economic Trends Potentially Affecting U.S.-Canada Trade Patterns. (44)	95–123899
Descriptive Report on Trade and Traffic Patterns between U.S.-Mexico. (45)	94–192234
Working Paper on the Impact of Western Economic Growth on Trade with Mexico. (46)	95–112348
Working Paper on the Role of Government in Trade and Transportation Between U.S.-Mexico. (47)	95–112355
Working Paper on Intermodal Requirements on the U.S.-Mexico Border. (48)	95–112363
Descriptive Report on Cross-Border Travel Activity between the U.S., Canada and Mexico. (49)	95–
Working Paper Inventory of Institutional and Legal Barriers to Seamless Interstate Borders within the United States. (50)	95–112371
Regional Data Base and Working Paper on Regional Computerized Data Base. (51)	95–142865
Institutional Profile Data Base and Working Paper on Institutional Profiles for Continental Trade and Transportation in the Western United States. (52)	95–142741
Inventory of Existing Trade, Traffic and Visitor Flow Data Sources. (53)	95–112389
Working Summary of Key Methods of Forecasting Trade and Traffic Patterns. (54)	95–142758
Working Paper on Data Requirements for Intermodal Planning and Analysis. (55)	95–112397

[R Doc. 95–6145 Filed 3–10–95; 8:45 am]
BILLING CODE 4910–22–P

[FHWA Docket No. 95–5]

Comprehensive Truck Size and Weight Study

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of public meetings and availability of report.

SUMMARY: This notice announces that the FHWA will hold two public meetings as part of its Comprehensive Truck Size and Weight Study (CTS&WS). The first meeting will be held on March 21, 1995, in Denver, Colorado. The second one will be held on April 5 and 6, 1995, in Washington, D.C. This three phase study was originally announced in a notice published in the **Federal Register** on February 2, 1995, at 60 FR 6587. This notice also announces the availability for public review of the summary report for Phase I of the study.

DATES: This docket will remain open until the study is completed. However, in order for statements for the record to be considered during the critical early stages of the study, they should be received no later than May 1, 1995.

ADDRESSES: Submit written, signed statements to FHWA Docket No. 95–5, FHWA, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590.

All statements received in Docket No. 95–5 will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of their statements must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Blow, Office of Policy Development, at (202) 366–4036; Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis, at (202) 366–2212, or Mr. Charles Medalen, Office of Chief Counsel, at (202) 366–1354, FHWA, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This study is being conducted partly in response to a legislative proposal in the 103rd Congress, H.R. 4496, that would extend Federal truck size and weight (TS&W) control to the National Highway System. This bill, or similar legislation, could have a significant impact on the public and private sectors and on the safety and efficiency of the total transport system. The Study will summarize a wide array of information on the many related aspects of TS&W policy. An extensive set of policy questions are described in the notice published on February 2, 1995, in the **Federal Register** at 60 FR 6587 announcing the CTS&WS for which we are seeking public input.

Public Meetings

The first public meeting will be held on March 21, 1995, in the Conference Room on the third floor of the Federal Building located at 555 Zang Street, Lakewood, Colorado. The meeting will begin at 8:30 a.m. and conclude at approximately 5:00 p.m., m.t.

The second meeting will be held on April 5 and 6, 1995, in Washington, D.C. at the DOT Headquarters, Nassif Building located at 400 Seventh Street, SW., in Room 2230. It has been scheduled in conjunction with the National Motor Carrier Advisory Committee meeting being held in Washington, D.C. on April 4 and 5. The public meeting for the CTS&WS will be held from 1:00 p.m., to 5:00 p.m. e.t. on April 5 and from 9:00 a.m. until approximately 12:00 Noon e.t. on April 6.

The public is invited to appear at these meetings and present information for consideration during the study including responses to the questions contained in the notice published on February 2, 1995, in the **Federal Register** at 60 FR 6587 and comments on the interim report made available in the docket. Oral presentations will be limited to 10 minutes, but complete statements may be submitted for the record by being placed in FHWA Docket No. 95–5.

Those wishing to make an oral presentation are asked to provide their name, organization, address, and telephone number to Ms. Ryan Rose, Walcoff Associates, 12015 Lee-Jackson Highway, Suite 500, Fairfax, Virginia

22033 (Telephone Number 703–934–9848) for scheduling their presentations. Persons making presentations may request a particular time, but they will be accommodated on a first-come-first-served basis.

Phase I Summary Report

The Summary Report for Phase I of the study developed as an interim product for the Federal Highway Administrator will be placed in the docket for public review and comment by March 10, 1995.

Authority: 23 U.S.C. 315; 49 U.S.C. 301, 302, 305; Pub. L. 102–548, 106 Stat. 3646.

Issued On: March 7, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–6070 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection Submitted to OMB for Review

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

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding an information collection titled Agricultural Loan Loss Amortization (12 CFR 35).

DATES: Comments on this information collection are welcome and should be submitted by May 12, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to the Office of Management and Budget (OMB) a Paperwork Reduction Act Submission regarding the following information collection:

Type of Review: Regular.

Title: Agricultural Loan Loss Amortization (12 CFR 35).

Description: The OCC is proposing to remove 12 CFR Part 35 and the attendant information collection, effective January 1, 1999. The OCC published 12 CFR Part 35 to implement title VIII of the Competitive Equality Banking Act (12 U.S.C. 1823(j)). Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999.

Form Number: None.

OMB Number: 1557-0186.

Respondents: Businesses or other for-profit.

Number of Respondents: 4.

Total Annual Responses: 4.

Average Hours Per Response: 15 minutes.

Total Annual Burden Hours: 1.

OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0186, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0186), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Comments: Comments regarding the submission should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: March 7, 1995.

James F.E. Gillespie,

Director, Legislative and Regulatory Activities.

[FR Doc. 95–6106 Filed 3–10–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Defense (DOD) Defense Manpower Data Center (DMDC) active duty records with VA disability Compensation records.

The goal of this match is to identify VA disability compensation benefit recipients who return to active duty, and to adjust or terminate benefits, if appropriate.

The Department of Veterans Affairs (VA) plans to match records of veterans who receive disability compensation from VA with active duty records maintained by DOD. The match with DOD will provide VA with data from the Defense Manpower Data Center Data Base. VA will use the data to update the master records of VA beneficiaries receiving disability compensation benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's return to active duty is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of return to active duty.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1991 compilation, Volume II, pages 967–971 as amended. The DOD records consist of information from the system of records identified as S322.10 DMDC Defense Manpower Data Center Data Base published at 58 FR 10872, February 22, 1993.

In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start June 1, 1995, but will start no sooner than 40 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 273–7258.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act

of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 2, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–6025 Filed 3–10–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 48

Monday, March 13, 1995

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on technical issues underlying the Board's Recommendation 93–5.

TIME AND DATE: 6:00 p.m., March 29, 1995.

PLACE: Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington 99352.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The importance of characterizing high-level radioactive waste to support safe storage, retrieval, pretreatment and immobilization programs, and the implications of program delays.
2. The status of implementing Board Recommendation 93–5.
3. The proposed change to the characterization strategy, including: the technical justification for changing strategies, and the advantages and disadvantages of the proposed strategy, with emphasis on characterization requirements for safe storage, retrieval, pretreatment, and immobilization.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Anderson, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board has repeatedly expressed the view that the Department of Energy needs to accelerate its current schedule for characterization of high-level radioactive waste in underground tanks at the Hanford Site. On July 19, 1993, the Board formally recommended to the Secretary of Energy (Recommendation 93–5) that DOE accelerate its actions to sample and characterize the Hanford tank wastes. The Secretary accepted the Board's recommendation; however, the Department's efforts to date to implement the Board's recommendation have been disappointing. The program for characterization of the waste is well behind schedule. The Board is informed that recent deferrals of a number of actions threaten to cause even further delays.

In accordance with the powers granted to the Board, a public hearing will be conducted by the Board in an open meeting. The Board has requested staff members of the Department of Energy, Westinghouse Hanford Company, and representatives from other organizations to brief the Board on the current status of activities under the Secretary's implementation plan for Recommendation 93–5. These participants are expected to answer Board questions based on their experience and technical knowledge and to provide additional documents as necessary. This hearing is an information gathering function. Examination of those appearing before the Board will be limited to the questions put to them by the Board. An opportunity will be available for comments by members of the interested public at the conclusion of the presentations and the Board's questioning of the participants.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. The Board will hold the record open until April 12, 1995, for the receipt of additional materials.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington, D.C. office and at the DOE's Public Reading Room, Richland Operations Office, 100 Sprout Road, Room 130 West, Richland, WA 99352.

Recommendation 93–5 in its entirety is on file at DOE's Public Reading Room, Richland Operations Office, 100 Sprout Road, Room 130 West, Richland, WA 99352, and at the Defense Nuclear Facilities Safety Board's Washington, D.C. office. It is also set forth in the **Federal Register** at 58 FR 40409.

The Board reserves its right to further schedule and otherwise regulate the course of this meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, and otherwise excise its power under the Atomic Energy Act of 1954, as amended.

Dated: March 9, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–6239 Filed 3–9–95; 2:24 pm]

BILLING CODE 3670–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. March 20, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 21, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 8, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–6243 Filed 3–9–95; 2:24 pm]

BILLING CODE 6760–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–05]

TIME AND DATE: March 23, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 701–TA–360–361 and 731–TA–688–695 (Final) (Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom, and Venezuela)—briefing and vote.
5. Outstanding action jackets:
   1. ID–95–010, Annual report in Inv. No. 332–237, Production Sharing: Use of U.S.-Made Components and Materials in Foreign Assembly Operations, 1990–1993.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: March 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–6181 Filed 3–9–95; 9:19 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Time and Date, and Place of Meeting

The National Credit Union Administration Board determined that its business requires the previously announced open meeting (Federal Register, Vol. 60, No. 43, page 12283, Monday, March 6, 1995) scheduled for 1:00 p.m., Friday, March 10, 1995 in the Board Room, 7th Floor, Room 7047, at 1775 Duke Street, Alexandria, Virginia, to be rescheduled and changed as follows:

TIME AND DATE: 10:00 a.m., Monday, March 13, 1995.

PLACE: Doubletree Hotel, Salon III of the Ballroom, 201 Marquette NW., Albuquerque, New Mexico 87102, (505) 247–7000.

The previously announced items are:

1. Final Interpretive Ruling and Policy Statement (IRPS) 95–1, Supervisory Review Committee.
2. Establishment of the Position of Ombudsman.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–6240 Filed 3–9–95; 8:45 am]

BILLING CODE 7535–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1474]

TIME AND DATE: 10 a.m. (EST), March 15, 1995.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on February 15, 1995.

Action Items

New Business

C—Energy

C1. Approval for Transmission/Power Supply Group to award a contract to ABB Power T & D Company for four 500–kV power transformers for the Lowndes, Mississippi, Substation.

C2. Approval for Transmission/Power Supply Group to supplement Contract Nos. TV–89287V with Parsons Main, Inc.; TV–90216V with EGS Corporation; and TV–90208V with Mesa Associates, Inc., for support services to supplement TVA's in-house resources.

C3. Approval for Purchasing to award a contract to Browning-Ferris Industries of Tennessee, Inc., to implement and manage a comprehensive solid waste disposal and recycling services program.

C4. Approval for Fossil and Hydro Power to award a contract to Roberts & Schaefer Company to provide engineering and design, materials and equipment, and field supervision of the installation and testing of a systemwide coal handling systems upgrade at TVA fossil plants.

C5. Approval for TVA Nuclear to enter into a personal services contract with Tennessee Board of Regents to provide instructional services for TVA Nuclear's onsite degree programs, subject to satisfactory negotiations and final review prior to execution.

C6. Approval for the Resource Group to supplement Contract No. TV–89601V with Fish and Wildlife Associates, Inc., to assist TVA in conducting biological research.

E—Real Property

E1. Grant of permanent easement to James A. and Gina Gilbert for access to adjacent privately-owned property and grant of an easement for a house and yard affecting approximately 0.09 acre and 0.16 acre, respectively, of Tract No. ACOR–2S of the Fabius properties in Jackson County, Alabama.

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Grant of easement to the State of Tennessee affecting 21 acres on Cherokee Lake in Grainger County, Tennessee.
2. Revision of TVA's administrative cost recovery regulations.
3. Expansion of the Testing and Restart Program.
4. Amendment of the firm transmission service agreement between TVA and Entergy Power, Inc.
5. Approval of a condemnation case.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: March 8, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95–6298 Filed 3–9–95; 3:41 pm]

BILLING CODE 8120–08–M

Corrections

Federal Register

Vol. 60, No. 48

Monday, March 13, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-94-32]

Tobacco Inspection; Growers' Referendum Results

Correction

In rule document 95–5537 beginning on page 12400 in the issue of Tuesday, March 7, 1995 make the following correction:

On page 12400, in the second column, under **EFFECTIVE DATE:**, in the first line, ''April 6, 1992.'' should read ''April 6, 1995.''

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV-93-706FR-A]
RIN0581-AB21

Watermelon Research and Promotion Plan; Amendments to the Plan, Rules and Regulations, and Rules of Practice for Petitions

Correction

In rule document 95–4736 beginning on page 10795 in the issue of Tuesday, February 28, 1995, make the following corrections:

1. On page 10796, in the third column, in the 1st full paragraph, in the 18th line, insert a period after ''vacancy''.

§ 1210.322 [Corrected]

2. On page 10798, in the third column, in § 1210.322(b), in the first line, ''mid term'' should read ''mid-term''; and insert a period at the end of paragraph (d).

§ 1210.341 [Corrected]

3. On page 10798, in the third column, in amendatory instruction 15. to § 1210.341, the third line from the bottom should read ''removing in redesignated paragraph (f)''.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-95-1766; FR-3337-I-01]

RIN 2502-AF87

Supportive Housing for Persons With Disabilities; Management

Correction

In rule document 95–4889 beginning on page 11836 in the issue of Thursday, March 2, 1995 make the following correction:

On page 11836, in the first column, under **DATES:**, in the first line, ''April 13, 1995.'' should read ''April 3, 1995.''

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-066-1430-01; CACA-13781]

Realty Actions; Sales; Leases; Etc.: California; Correction

Correction

In notice document 95–4559 beginning on page 10105 in the issue of Thursday, February 23, 1995, in the third column, under **ACTION**, in the second line from the bottom, ''1994'' should read ''1984''.

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95-1 CARP DD92-94]

Ascertainment of Controversy for 1994 Digital Audio Recording Royalty Funds

Correction

In notice document 95–5329 beginning on page 12251 in the issue of Monday, March 6, 1995, make the following correction:

On page 12251, in the third column, in the **DATES** section, in the first line ''April 15, 1995'' should read ''April 5, 1995''.

BILLING CODE 1505–01–D

federal register

Monday
March 13, 1995

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 58

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 58

[Docket No. R–95–1770; FR–3811–I–01]

RIN 2501–AB88

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements provisions enacted in the Multifamily Housing Property Disposition Reform Act of 1994 that provide for the assumption of environmental review responsibilities by States and units of general local government, including those that are not recipients, under certain public and Indian housing programs, special projects, and the FHA multifamily housing finance agency risk sharing pilot program.

DATES: *Effective Date:* This rule is effective on April 12, 1995, except for §§ 58.1(c)(6)(i), and 58.2(a)(4)(v)(A) which will become effective October 14, 1996, unless this interim rule is published as a final rule or the Department publishes a subsequent document in the **Federal Register**.

Sunset Provision: Sections 58.1(c)(6) through (8), 58.2(a)(4)(v) through (4)(vii), and 58.11(b) through (d) shall expire and shall not be in effect after October 14, 1996, unless this interim rule is published as a final rule or the Department publishes a document in the **Federal Register** to extend their effectiveness. If the interim rules cited in the sunset provision expire, HUD will publish a document in the **Federal Register** removing them.

Comments Due Date: May 12, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2894. For telephone communication, contact Fred Regetz, Environmental Review Division at (202) 708–4346. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, enacted April 11, 1994; hereafter referred to as ''MHPDRA'') provides authority for States and units of general local government (including Indian tribes or Alaska native villages) to carry out the Federal environmental review responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347 (NEPA), and such other provisions of law as the Secretary shall specify, for recipients of HUD assistance under four HUD programs. These programs are: (1) Public and Indian housing programs and the Section 8 program under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (USHA of 1937) (see MHPDRA section 305(b)); (2) special projects appropriated under an appropriations act for HUD, such as special projects under the head ''Annual Contributions for Assisted Housing'' in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (see MHPDRA section 305(c)); and (3) the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (see MHPDRA section 307(b)(4)). This interim rule amends the existing regulations at 24 CFR part 58 to implement these provisions of the MHPDRA.

Congress previously authorized recipients under certain HUD programs to assume Federal environmental responsibilities, beginning with recipients under the Community Development Block Grant program under title I of the Housing and Community Development Act of 1974. However, the MHPDRA amendments mark the first time that States and units of general local governments (including Indian tribes and Alaska native villages) that are *not* recipients may assume these responsibilities. (Under the public and Indian housing programs, the Section 8 program, and the Risk Sharing Pilot Program covered by the MHPDRA provisions, the recipients include public housing agencies, Indian housing authorities and qualified housing finance agencies, rather than States, units of general local government, Indian tribes or Alaska native villages. Under the Section 8 program for moderate rehabilitation of single room occupancy (SRO) dwellings for homeless individuals, the recipient may also be a nonprofit organization. In that case, a PHA or IHA may administer the Section 8 assistance. In these circumstances, the PHA or IHA will be considered the recipient for the purpose of this rule. In the case of special projects, recipients may be either States, units of general local governments, Indian tribes or Alaska native villages, or non-profit organizations.)

On August 26, 1994 (59 FR 44258), HUD published an interim rule implementing other MHPDRA environmental provisions pertaining to the HOME Investment Partnerships Program and the Lead-based Paint Hazard Reduction and Abatement Program. The amendments to 24 CFR part 58 in today's interim rule contain changes to provide that the part 58 procedures for the assumption and carrying out of responsibilities for environmental review, decisionmaking and action apply to public and Indian housing programs, the Section 8 Program other than Section 8 assistance under 24 CFR part 886 to projects with HUD-insured or HUD-held mortgages and in connection with the disposition of HUD-owned projects, special projects, and the FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program covered by the MHPDRA amendments. Unlike the MHPDRA provisions regarding the HOME Investment Partnership Program, the MHPDRA provisions affecting these programs were not under a statutory deadline for issuance of effective rules.

It should be noted that the MHPDRA provisions do not permit assumption of environmental review responsibilities under all public and Indian housing programs. Section 26 of the United States Housing Act of 1937 (USHA), as added by section 305(b) of MHPDRA, authorizes the Secretary of HUD to ''provide for the release of funds for projects or activities under this title (i.e., title I of the USHA), as specified by the Secretary upon the request of a public housing agency (including an Indian housing authority) under this section, if the State or unit of general local government, as specified by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action * * *.''

Thus, the MHPDRA and this rule do not provide for the assumption of environmental review responsibilities under activities carried out under titles other than title I of the USHA, such as HOPE activities under title III of the USHA. Moreover, since a public housing agency or Indian housing authority must request the release of funds under the assumption procedure authorized by MHPDRA, the procedure does not apply to any Section 8 activity in which HUD works directly with a private owner, with no public housing agency or Indian housing authority involvement.

It should be noted, however, that HUD has determined that activities under the Indian Mutual Help program provided for in Section 202 of the USHA do qualify as activities under title I and will be subject to the environmental review procedures authorized by Section 26. The Department notes that Section 202(b)(1) of the USHA provides that the mechanism for providing financial assistance for the development, acquisition, operation and improvement of Mutual Help housing is that the Secretary ''may enter into contracts with Indian housing authorities *under title I*'' (emphasis added). Moreover, Section 201(b)(1) of the USHA provides that (except as otherwise provided in title II) the provisions of title I shall apply to low-income housing developed or operated pursuant to a contract between the Secretary and an IHA. Accordingly, environmental review for Indian Mutual Help activities will be conducted under the provisions of 24 CFR part 58.

The amendments to 24 CFR part 58 in this interim rule change the definition of recipient to include, for the first time, recipients other than States, units of general local government, Indian tribes and Alaska native villages. These recipients include public housing agencies or Indian housing authorities, direct grantees of HUD for special projects, and qualified housing finance agencies. This interim rule also provides that a ''responsible entity'' will assume the responsibility for carrying out environmental review requirements.

Under the programs covered by the MHPDRA amendments, the responsible entity may be a State, unit of general local government, Indian tribe or Alaska native village that is not a recipient. In § 58.2(a)(6), the regulation designates the appropriate governmental unit that will act as the responsible entity under the programs covered by the MHPDRA provisions. Under these programs, recipients other than States, units of general local government, Indian tribes or Alaska native villages are required to request a responsible entity (i.e., the unit of general local government, the State or the Indian tribe or Alaska native village) with jurisdiction, to provide the requisite environmental review, decisionmaking and action for assisted projects.

In such cases, the interim rule provides that the State, unit of general local government, or Indian tribe or Alaska native village that is the responsible entity must send the Request for Release of Funds (RROF) and Certification to the recipient. The recipient in turn submits the certification of the responsible entity to HUD with a cover letter requesting the release of funds and indicating that the recipient agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed changes in the scope of the project or any change in environmental conditions. For documentation purposes, the interim rule mandates that if the responsible entity determines that some of the activities are exempt under applicable provisions of Part 58, the responsible entity shall advise the recipient that the recipient may incur costs on these activities as soon as programmatic authorization is received from HUD. This finding shall be documented in the environmental review record maintained by the responsible entity and in the recipient's project files.

Finally, the Department is still working out implementation issues and logistics for the public housing programs. Therefore, while this rule covers the public housing programs, this rule also delays implementation of Part 58 for the public housing programs until the Department resolves all implementation concerns. In the future, the Department will publish a notice in the **Federal Register** which makes this rule effective for the public housing programs.

II. Findings and Certifications

Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made to part 58 by this interim rule shall expire on the eighteen-month anniversary date of the effective date of this interim rule unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the eighteen-month anniversary date of the effective date of this interim rule.

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment is contrary to public interest because this rule will expedite the receipt of necessary funding by allowing States and units of local government to conduct the Federal environmental review.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulation at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will allow states and units of general local government (including Indian Tribes and Alaska native villages) to carry out Federal environmental review responsibilities for some recipients of HUD assistance. However, because in most cases the environmental review will be paid for with HUD assistance funds, this rule is not expected to have a significant economic impact on a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the

rule is not subject to review under the order. Specifically, this rule will allow states and units of general local government (including Indian Tribes and Alaska native villages) to carry out Federal environmental review responsibilities for some recipients of HUD assistance. However, because in most instances the Federal environmental review will be funded by HUD, this rule is not expected to have a substantial effect on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 58

Environmental protection, Community development block grants, Environmental Impact Statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 58 of title 24 of the Code of Federal Regulations is amended as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

1. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

2. The heading for part 58 is revised as set forth above.

3. In paragraph (c) of § 58.1, the word ''and'' is removed at the end of paragraph (c)(4), the period at the end of paragraph (c)(5) is removed and a semicolon is added in its place, and new paragraphs (c)(6), (c)(7), (c)(8), are added to read as follows:

§ 58.1 Purpose, scope and applicability.

* * * * *

(c) *Applicability.* * * *

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(ii) Indian Housing Programs under Title I of the United States Housing Act of 1937, including the Mutual Help Program (42 U.S.C. 1437 *et seq.*); and

(iii) Assistance administered by a public housing agency or Indian housing authority under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), except for assistance provided under 24 CFR part 886.

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the head ''Annual Contributions for Assisted Housing'' in title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts; and

(8) The FHA Multifamily Housing Finance Agency Risk Sharing Pilot Program under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note).

4. In § 58.2, paragraph (a)(4) is revised, and new paragraphs (a)(6) and (a)(7) are added, to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) * * *

(4) Recipient means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(c):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) (A) With respect to Public Housing Programs under § 58.1(c)(6)(i), a public housing agency;

(B) With respect to Indian Housing Programs under § 58.1(c)(6)(ii), an Indian housing authority;

(C) With respect to Section 8 assistance under § 58.1(c)(6)(iii), a public housing agency or Indian housing authority;

(vi) Any direct grantee of HUD for a special project under § 58.1(c)(7); and

(vii) With respect to the FHA Multi-Family Housing Finance Agency Risk-Sharing Pilot Program under § 58.1(c)(8), a qualified housing finance agency.

* * * * *

(6) *Release of funds.* In the case of FHA Multifamily Housing Finance Agency Risk-Sharing Pilot Program under § 58.1(c)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter.

(7) *Responsible entity* means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(c)(1) through (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(c)(6) through (8), a State, unit of general local government, Indian tribe or Alaska native village. Nonrecipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State; and

(D) For Indian housing authorities, the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority.

* * * * *

5. In § 58.4, paragraph (b) is revised to read as follows:

§ 58.4 HUD Legal authority.

* * * * *

(b) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decisionmaking, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities, other than units of general local government that

receive assistance from a State, assume these responsibilities by execution of either a grant agreement with HUD or a legally binding document, such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to recipients, the State must provide for appropriate procedures by which these recipients will evidence their assumption of environmental responsibilities.

* * * * *

6. In § 58.6, paragraph (a)(2) is revised to read as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(2) Where a recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

* * * * *

7. A new section 58.7 is added to subpart A to read as follows:

§ 58.7 Effective date of regulation.

This section, §§ 58.1(c)(6) through (8), 58.2(a)(4)(v) through (4)(vii), and 58.11(b) through (d) shall expire and shall not be in effect after October 14, 1996, unless the interim rules listed in this section are published as a final rule or the Department publishes a document in the **Federal Register** to extend their effectiveness. If the interim rules cited in this section expire, HUD will publish a document in the **Federal Register** removing them.

8. Section 58.10 is revised to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(c) in accordance with procedural provisions of NEPA and the CEQ regulations (40 CFR parts 1500 through 1508), as well as the procedures set forth in this part, unless otherwise provided for in program regulations. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in § 58.5.

9. Section 58.11 is revised to read as follows:

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part should contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case by case basis.

(b) If a public housing, Indian housing, or special project recipient objects to the nonrecipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review .

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

10. Section 58.34 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 58.34 Exempt activities.

(a) A responsible entity does not have to comply with the environmental requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

* * * * *

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

11. Section 58.46 is revised to read as follows:

§ 58.46 Time delays for exceptional circumstances.

Under the circumstances described in paragraphs (a), (b), and (c) of this section, the responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF. These circumstances are:

(a) When there is considerable interest or controversy concerning the project;

(b) When the proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) When the project is unique and without precedent.

12. Section 58.47 is revised to read as follows:

§ 58.47 Re-evaluation of assessment findings.

(a) A responsible entity must re-evaluate the EA findings when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project and its cost estimate;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient selects an alternative not considered in the original EA.

(b) The purpose of the responsible entity's re-evaluation of the EA is to determine if the FONSI is still valid. If the FONSI is still valid but the data or conditions upon which it was based have changed, the responsible entity must amend the original assessment and update its ERR by including this re-evaluation and its determination based on its findings. If the responsible entity determines that the FONSI is no longer valid it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section or new circumstances or environmental conditions under paragraph (a)(2) of this section and must permit the responsible entity to re-evaluate the EA before proceeding.

13. Section 58.64 is revised to read as follows:

§ 58.64 Supplemental environmental impact statements.

A supplement to the DEIS or FEIS must be prepared when a recipient proposes substantial changes in the proposed project or when significant new circumstances or information

become available during the environmental review process. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes or significant new circumstances or information and must permit the responsible entity to prepare a supplement before proceeding. Supplements may be used to modify or update EIS's which the responsible entity has determined to be valid and are being adopted for use. Supplemental EIS's are subject to the requirements set forth in 40 CFR 1502.9.

14. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
58.1(a)	Recipients of HUD assistance.	Recipients of HUD assistance and other responsible entities.
58.1(a), last word of paragraph	Recipients	Recipients of HUD assistance and other responsible entities.
58.1(b)	Recipients of HUD assistance.	Responsible entities.
58.1(c), introductory text	Recipients	Recipients or other responsible entities.
58.2(a)(3)	Grant recipient	Recipient.
58.4(b)	Recipients	Responsible entities.
58.5, introductory text	Recipient	Responsible entity.
58.6, introductory text and paragraph (c)	Recipient	Responsible entity.
58.6, introductory text	Recipient's	Responsible entities.
58.12	Recipient	Responsible entity.
58.13, introductory text and paragraph (a)	recipient's	responsible entity's.
58.13(a) and (b)	Recipient	Responsible entity.
58.14	Recipient	Responsible entity.
58.14	Grant recipient	Responsible entity.
58.15, introductory text	Recipient	Responsible entity.
58.15, introductory text and concluding text	Grant recipient	responsible entity.
58.30	Recipient	Responsible entity.
58.30	Recipient's	Responsible entity's.
58.32(a)	Recipient	Responsible entity.
58.32(b)	Recipient's	Responsible entity's.
58.35(b), (c) introductory text and (d)	Recipient	Responsible entity.
58.36	Recipient	Responsible entity.
58.37(a)(2)	Recipient's	Responsible entity's.
58.37(a)(6),(b)	Recipient	Responsible entity.
58.40	Recipient	Responsible entity.
58.41	Recipient	Responsible entity.
58.42	Recipient	Responsible entity.
58.43	Recipient	Responsible entity.
58.43	Recipient's	Responsible entity's.
58.44, introductory text and concluding text	Recipient	Responsible entity.
58.50	Recipient	Responsible entity.
58.50	Recipient's	Responsible entity's.
58.52	Recipient	Responsible entity.
58.55	Recipient	Responsible entity.
58.56	Recipient	Responsible entity.
58.57	Recipient	Responsible entity.
58.59	Recipient	Responsible entity.
58.59	Recipient's	Responsible entity's.
58.60	Recipient	Responsible entity.
58.61	Recipient	Responsible entity.
58.61	Recipient's	Responsible entity's.
58.62	Recipient	Responsible entity.
58.63	Recipient	Responsible entity.
58.65	Recipient	Responsible entity.
58.65	Recipient's	Responsible entity's.
58.66	Recipient	Responsible entity.
58.66	Recipient's	Responsible entity's.
58.70	Recipient	Responsible entity.
58.73	Recipient's	Responsible entity's.
58.74	Recipient's	Responsible entity's.
58.75(b), (c), (d), (e)(2), (e)(3), and (g)	Recipient	Responsible entity.
58.75, introductory text and paragraph (a)	Recipient's	Responsible entity's.
58.76, introductory text and paragraph (e)	Recipient's	Responsible entity's.

15. Section 58.71 is revised to read as follows:

§ 58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the responsible entity's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(c). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in § 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD has approved its request for release of funds. The RROF and certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD with a cover letter requesting the release of funds and indicating that it agrees to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this Part, the responsible entity shall advise the recipient that it may incur costs on these activities as soon as programmatic authorization is received. This finding shall be documented in the environmental review record maintained by the responsible entity and in the recipient's project files.

16. Section 58.77 is amended by revising paragraph (b) and paragraphs (d)(1) introductory text, (d)(1)(ii), (d)(1)(iv), and (d)(2), to read as follows:

§ 58.77 Effect of approval of certification.

* * * * *

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It shall be HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the state, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

* * * * *

(d) *Responsibility for monitoring training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring of the environmental activities performed by responsible entities that have assumed responsibilities for environmental review, decisionmaking and action under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

* * * * *

(ii) HUD may require attendance by staff of the responsible entity at HUD sponsored or approved training, which will be provided periodically at various locations around the country;

* * * * *

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

* * * * *

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.17 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

Dated: January 31, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–6054 Filed 3–10–95; 8:45 am]

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federal register

Monday
March 13, 1995

Part III

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A–91–73; FRL–5168–2]

RIN 2050–AD26

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On October 20, 1993, EPA proposed risk management program regulations, mandated under the accidental release provisions of the Clean Air Act (CAA). The purpose of the proposed rule is to reduce the number and severity of chemical accidents. Based on information presented during public hearings and in comments on the proposed rule, EPA is requesting additional comment on the following regulatory options and issues: approaches for increasing compliance flexibility and decreasing cost while still ensuring preparedness by tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices, and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for sources' design and operations; and the implementation of CAA section 112(r) regulations, including methods of integrating these requirements into the title V permitting requirements and the codification of approved state section 112(r) requirements.

DATES: *Comments:* Comments must be submitted on or before May 12, 1995.

Hearings: The Agency will hold a hearing on March 31 from 9 a.m. until 4 p.m.

ADDRESSES: *Comments:* Written comments may be mailed or submitted to: U.S. Environmental Protection Agency, Attn: Docket (A–91–73), Room 1500, 401 M Street, SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may also be faxed to the docket at 202–260–4400, as long as faxes are followed by hard copies.

Hearings: The hearing will be held at the EPA Auditorium, 401 M Street, SW, Washington, DC. People who want to testify at this hearing should call 703–934–3158 by March 27.

Docket: Supporting information used in developing the accidental release prevention regulations is contained in Docket No. A–91–73. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at the address listed above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Lyse D. Helsing at (202) 260–6128, Chemical Emergency Preparedness and Prevention Office (5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1–800–535–0202.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
- A. Statutory Authority
- B. Relationship of Section 112(r) to Other Requirements of the Clean Air Act
- C. Summary of the Proposed Risk Management Program Rule

II. Discussion of Issues and Approaches
- A. Approaches for Tiering the Regulatory Requirements
- B. Hazard Assessment
- C. Accident Information Reporting
- D. Public Participation
- E. Inherently Safer Approaches
- F. Implementation and Integration of Section 112(r) with State Programs

III. Required Analyses
- A. Executive Order 12866
- B. Regulatory Flexibility Act
- C. Enhancing the Intergovernmental Partnership
- D. Paperwork Reduction Act

I. Introduction and Background

A. Statutory Authority

This supplemental notice of proposed rulemaking is being issued under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r) and 7601(a)(1)).

B. Relationship of Section 112(r) to Other Requirements of the Clean Air Act

The Clean Air Act Amendments of 1990 amend CAA section 112 and add a new paragraph (r). The intent of CAA section 112(r) is to prevent accidental releases to the air and minimize the consequences of releases by focusing preventive measures on chemicals that pose the greatest risk to the public and the environment. For a summary of the statutory requirements of section 112(r) and related statutory provisions, see the notice of proposed rulemaking (NPRM) (58 FR 54190; October 20, 1993).

Since the October 20, 1993, notice, the Environmental Protection Agency (EPA) has taken various additional regulatory actions relevant to the section 112(r) program. EPA promulgated the *List of Regulated Substances and Thresholds for Accidental Release Prevention* on January 31, 1994 (59 FR 4478). The list of regulated substances and thresholds will determine which sources must comply with the accident prevention regulations.

CAA section 112(l) contains the statutory authority for EPA to approve and delegate specific Federal authorities to states. EPA promulgated a rule under section 112(l) on November 26, 1993 (58 FR 62262) that addresses the approval of both state programs for section 112 that mirror the Federal requirements and programs that differ from Federal requirements. Approval of state rules addressing section 112(r) requirements is addressed in the section 112(l) rule.

Certain other regulatory actions that predate the October 20, 1993, NPRM are relevant to today's supplemental notice. Specifically, section 112(r) is addressed in CAA title V, operating permits, and the subsequent rulemaking in 40 CFR part 70 (part 70) published on July 10, 1992 (57 FR 32250). Section 112(r) listed substances are ''regulated air pollutants,'' and the accident prevention regulations developed under section 112(r)(7) are ''applicable requirements'' for the purposes of CAA title V and part 70.

C. Summary of the Proposed Risk Management Program Rule

The proposed rule would require sources to:

- Register with EPA not later than three years after publication of the final rule;
- Develop and implement a risk management program that includes a hazard assessment, prevention program, and emergency response program, and maintain on-site documentation of the program's implementation. The hazard assessment would include offsite consequence analyses and a five-year accident history;
- Develop and submit to Federal, state, and local authorities a risk management plan (RMP) that documents the risk management program. This plan will be available to the public; and
- Update the risk management program and plan as required by rule, audit, or process or chemical changes at the source.

The risk management program addresses the general requirements of CAA section 112(r)(7)(B) for regulations to provide for accidental release detection and prevention. The risk management plan, referred to as the

RMP in this notice, addresses the specific requirements of CAA section 112(r)(7)(B) for a plan that provides governmental entities and the public with information on the hazards found at sources and the source's plans for addressing the hazards. These hazards would be identified and addressed through implementation of the risk management program elements. Therefore, the RMP would summarize the results of hazard assessments and the implementation of the risk management program requirements. The proposed rule also contains a system to audit the RMPs, including criteria for selecting sources for audits.

II. Discussion of Issues and Approaches

During public hearings on the proposed rule, in comments provided on the proposed rule, and through additional sources, EPA has learned that six areas of the proposed rule need clarification and further comment prior to development of a final rule. In addition to the regulatory provisions and alternatives in the proposed rule, EPA is requesting comment on regulatory options under consideration in the following areas: approaches for tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for design and operation; and the implementation of section 112(r) regulations including methods of integrating these requirements into the title V permitting requirements. All regulatory provisions and alternatives under the proposed rule remain as options for the final rule. EPA will consider carefully comments already submitted. Therefore, commenters on this notice should not duplicate comments already submitted, but should focus on the issues in this notice.

A. Approaches for Tiering the Regulatory Requirements

Many commenters asked for a tiered approach (i.e., applying different requirements to different sources). Commenters have presented several reasons why a tiered approach is needed:

- Commenters stated that, if a source cannot cause offsite impacts, the source should not have to meet the requirements of the rule.
- Commenters stated that the rule should be streamlined to ensure that the requirements are appropriate for each type of source covered and eliminate duplicative coverage where possible. Commenters argued that CAA section 112(r)(7)(B)(i) allows EPA to take into account differences in size, operations, processes, class and categories of sources, and voluntary actions.
- Commenters, particularly states, were concerned about whether the final rule can be implemented effectively. Substantial requirements imposed on lower risk sources may undermine the program because implementing agencies and the public will find it more difficult to identify and focus on the most serious risks. Resources spent on unproductive regulatory requirements better might be used to analyze and develop new accident prevention technologies.
- Commenters have stated that, based on their experience implementing similar accident prevention rules in New Jersey, California, and Delaware, and implementing the OSHA PSM standard, the rule would impose substantially higher costs on affected sources than EPA had originally estimated. These commenters argued that the costs of the rule should reasonably be related to benefits obtained. Commenters noted that EPA is required under CAA section 112(r)(7)(C) to consider the effects on small businesses.

In light of data and information supplied by commenters during the initial comment period and developed by EPA subsequent to publication of the initial proposed rule, EPA believes that it would be unreasonable to apply the proposed rule prevention program to all sources subject to part 68. EPA is considering a tiered approach to achieve the program objectives of ensuring that the effort is appropriate to the potential risk and recognizing the prevention steps that sources are already required to take under other regulatory programs. EPA believes a tiered implementation framework may be a reasonable way to reduce the cost without sacrificing accident prevention benefits.

EPA is proposing the use of three tiers, representing increasing levels of effort, in defining requirements for sources. The tiers would apply to different categories and classes of sources based on their potential risk and steps already being taken. In light of the various comments summarized above, EPA does not believe that the third tier, which would be the proposed prevention program and would entail the greatest level of effort among the alternatives discussed below should apply to all sources. EPA solicits comments on this position.

Under the Common Sense Initiative (CSI), the Agency is working with a broad cross section of stakeholders to examine regulations affecting six industry sectors. These sectors are petroleum refining, metal finishing, iron and steel, automobile manufacturing, electronics and computers, and printing. Under CSI, the Agency and stakeholders together will be looking for approaches that provide more environmental protection at less cost for these industry sectors. The tiering approaches discussed in this notice incorporate these CSI principles.

Discussion of Issues and Approaches

The CAA mandates that each source with more than a threshold quantity of a regulated substance develop and implement a risk management plan that includes an offsite consequence analysis, a five-year accident history, a prevention program, and an emergency response program. Under its proposed rule, EPA would require the submission of an RMP that summarizes each of the elements listed. The risk management program specifies the activities required for each of the broad elements. The original proposal would require every source affected by the rule to complete all specified activities and submit an RMP. EPA is proposing today to create the following three tiers of risk management programs:

Tier 1: A brief RMP would demonstrate and certify that the source's worst-case release would not reach any public or environmental receptors of concern.

Tier 2: A streamlined risk management program would require sources to conduct an offsite consequence analysis, document a five-year accident history, implement prevention steps, have an emergency response plan, and submit an RMP. The rule would not require specific steps to comply with the prevention and emergency response programs.

Tier 3: The full risk management program and plan would be that described in the proposed rule.

In addition to the approach in the proposed rule, EPA has developed two alternative approaches to assigning sources to the tiers in a way that takes into consideration risk as well as differences between types, classes, and kinds of sources:

Approach 1: Sources that could meet the requirements of Tier 1 would comply with Tier 1; manufacturers with 100 or more full-time employees (FTEs) producing pulp (SIC code 2611), chlor-alkalis (2812), industrial inorganics, not elsewhere classified

(nec) (2819), plastics and resins (2821), industrial organics, nec (2869), nitrogen fertilizers (2873), agricultural chemicals, nec (2879), and petroleum refineries (2911) would comply with Tier 3 requirements; all other sources would comply with Tier 2 requirements. In addition, eight years after the effective date of the rule, sources in SIC codes 2812, 2819, 2869, 2873, and 2911 with 20 to 99 FTEs would be required to meet Tier 3 requirements.

Approach 2: Sources that could meet the requirements of Tier 1 would comply with Tier 1; other sources with fewer than 100 full-time employees (FTEs) would comply with Tier 2 requirements; all other sources would comply with Tier 3 requirements.

Discussion of Tier Requirements

Tier 1 (No Impact Tier). A source in Tier 1 would be a source that is subject to part 68 because it has more than a threshold quantity of a regulated substance, but that does not pose a risk to public or environmental receptors. A source would be eligible for Tier 1 if the owner or operator can demonstrate that, in a worst-case release, there are no public and environmental receptors of concern within the impact distances specified by rule. Sources would not be eligible for Tier 1 if they have had a significant accidental release (as defined in the proposed rule) in the previous five years. To ensure that emergency responders are aware of the hazards at the sites, sources that exceed a threshold only for flammable or explosive regulated substances (i.e., they have no listed toxics above the threshold quantity) would need to post a sign at all normal access routes that warns the public and emergency responders about the hazard (fire or explosion) and lists an emergency contact telephone number. The owner or operator of a source eligible for Tier 1 that handles a regulated toxic substance would need to show that the local emergency response plan prepared under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 303, 42 U.S.C. 11003, specifically addresses their source. For regulated substances that are not extremely hazardous substances (EHSs) under EPCRA, the owner or operator of the source would need to certify that source emergency response planning and measures have been coordinated with local first responders. EPA requests comments on this approach. Sources meeting these criteria would be required to register, submit an RMP consisting of the registration and standard one-paragraph statement (see rule text), and maintain records of compliance with these requirements.

The provisions described above would satisfy each element of section 112(r)(7)(B)(ii) while recognizing that it is reasonable for this class of sources to be addressed in a simple manner. The hazard assessment element of the program would be satisfied by verifying that there were no receptors within the potential impact zone of the worst-case accidental release and by the absence of any significant accidental release within the previous five years. In addition, EPA proposes that, in lieu of obtaining a professional survey, an owner or operator could rely on visual approximations of the distances surrounding the source to public and environmental receptors for comparison to the distance generated by the worst-case release. The prevention program would not require additional prevention activities because the characteristics of the process are such that there are no potential public or environmental impacts. A standardized RMP ensures that local emergency planners and the state know that the source has been assessed by the owner or operator.

EPA believes that Tier 1 will be most suitable for operations that handle flammable substances or explosive substances in locations that are relatively distant from the public. In lieu of presenting a distance table for explosives in this part, EPA would allow a source to be eligible for Tier 1 if it maintained a distance to the public and environmental receptors consistent with 27 CFR part 55 or 30 CFR parts 56, 57, or 77. These regulations, promulgated by the Bureau of Alcohol, Tobacco and Firearms (BATF) and the Mine Safety and Health Administration (MSHA) incorporate the American Table of Distances (ATD). The distances identified in the ATD are more conservative than the EPA listing criteria and should, therefore, protect the public and the environment from the effects that caused EPA to list explosives.

Based on the known properties of flammable substances and explosives, it is possible to use conservative assumptions and calculate the maximum distance at which an overpressure or heat effect of concern can be detected. Distances for potential impacts of accidental releases for flammable substances and processes could be determined by consulting distance tables or derived using the following calculation method described in Flammable Gases and Liquids and Their Hazards:

$$D = C \times (nE)^{1/3},$$

where D is the distance in meters to a 1 psi overpressure; C is a constant for damages associated with 1 psi overpressures or 0.15, n is a yield factor of the vapor cloud explosion derived from the mechanical yield of the combustion and is assumed to be 10 percent (or 0.1) and E is the energy content of the explosive part of the cloud in Joules. E can be calculated from the mass of substance in kilograms times the heat of combustion (hc) in Joules per kilogram as follows:

$$E = \text{mass} \times hc$$

Combining these two equations gives:

$$D = 0.15 \times (0.1 \times \text{mass} \times hc)^{1/3}$$

If distances to receptors are greater than the distance given by the calculation method, then a source could be eligible for Tier 1.

EPA has received a study addressing the potential consequences of accidental releases from oil and gas exploration and production (E&P) sources that may provide a more suitable method for calculating impact distances from these sources than the general formula presented above. The study, *Hazard Assessment of E&P Facilities Potentially Subject to the EPA's Risk Management Program Regulations*, was submitted by the American Petroleum Institute in January 1995 and is available in the docket (see **ADDRESSES** section of this rule). Generally the study purports to show that given the composition of produced hydrocarbons at the source and certain physical characteristics of an E&P source, such as operating phase and piping size, one may estimate the potential impact distances for vapor cloud explosions and radiant heat effects of an accidental release. EPA is announcing the availability of this study and seeks comment on whether EPA should allow E&P sources to use the results of the study to determine worst-case release impact distances.

For listed toxic substances, EPA is proposing that sources use the lookup tables discussed in Section B below. Sources would use the lookup tables to determine the impact distance for their worst-case releases. If a source can demonstrate that there are no public or environmental receptors of concern within the distance, the source would be eligible for Tier 1.

EPA seeks comment on whether Tier 1 is appropriate for the sources discussed above. In particular, EPA seeks comment on whether Tier 1 is appropriate for sources that have toxic regulated substances present in more than a threshold quantity. Should sources be allowed to determine that they have no offsite impacts for toxics

based on site-specific analyses rather than the lookup tables? Is the criterion of no significant accidental release in the previous five years appropriate as a condition for Tier 1 eligibility? Are additional response preparedness activities necessary beyond what has been specified for sources in this tier?

Tier 2 (Streamlined Program). Sources would be required to register with EPA, conduct a hazard assessment, develop a five-year accident history, prevention program, and emergency response program, and submit an RMP summarizing these elements.

The rule would not specify the prevention program in detail, but a source's program would have to cover the statutory elements of training, maintenance, safety precaution, and monitoring. The prevention program section of the RMP would describe the steps the source takes to train employees and maintain the facility, the safety precautions used, and monitoring. Sources may be able to meet these requirements through compliance with other, already existing Federal regulations. For example, almost all sources are subject to OSHA regulations. The Hazard Communication Standard (29 CFR 1910.1200) requires training on hazards and preventive actions. OSHA has numerous rules related to safety precautions. Certain industries (e.g., handlers of anhydrous ammonia and LPG) have specific OSHA standards. Propane handlers are also generally subject to state and local laws based on NFPA–58, a storage and handling standard for propane. Sources could cite compliance with these standards as part of their description of their prevention steps. Sources that are in compliance with the OSHA process safety management (PSM) standard or with chemical and refinery industry standards would be able to cite compliance with these because they parallel EPA's proposed prevention program.

One mandated prevention element not usually addressed in regulations, except OSHA PSM, is maintenance. Sources would be required to describe how they maintain a safe facility; EPA would not, however, specify maintenance steps. EPA emphasizes that, under CAA section 112(r)(1), all sources already are required to identify their hazards and design and maintain a safe facility and would continue to be subject to this general duty under today's proposed rule.

The response program would document procedures for informing the public and local entities about accidental releases, procedures to be used on site to respond to an accidental release, and a description of employee training measures regarding emergency situations. EPA requests comment on whether Tier 2 sources should be required to exercise the emergency response program under proposed § 68.45 or whether a streamlined response program would be sufficient. EPA notes that, for both Tier 2 and Tier 3 (described below), compliance with other Federal contingency and emergency response planning requirements (e.g., RCRA, OPA–90) would be considered adequate to meet the emergency response requirements of the rule. EPA asks for comment on what other Federal emergency response measures would satisfy the requirements of section 112(r)(7)(B)(ii)(III). In particular, does HAZWOPER (29 CFR 1910.120) fulfill the requirement for ''a response program providing for specific actions * * * so as to protect human health and the environment''? If a source is specifically addressed in an emergency plan under EPCRA section 303, should that satisfy the response program element of the CAA? Should EPA require that the LEPC meet the membership, planning process, and public availability requirements of EPCRA sections 301, 303 and 324 for a source to rely on an EPCRA local emergency plan?

The streamlined approaches under Tier 2 fulfill the statutory provisions of section 112(r)(7)(B)(ii), while exercising the discretion granted under section 112(r)(7)(B)(i) to recognize ongoing prevention activities at classes of sources. Requirements for hazard assessments and response programs for sources would be similar to those in the original proposal as modified by other portions of today's notice. The five-year accident history would be based on the proposed rule. The prevention program would place less burden on sources that are subject to other governmental or industrial programs or that seem to present a lesser risk of a significant accidental release than other sources, based on public data and inferences drawn from such data. The RMP will fulfill the right-to-know aspects of section 112(r) by requiring a source to summarize data about its hazard assessment, prevention, and response program activities and make this information available to the public. EPA seeks comments on the proposed Tier 2 requirements. Specifically, EPA seeks comment on whether additional, specific prevention activities should be required to address safety precautions, maintenance, monitoring, and training (e.g., any particular requirements of the proposed rule targeted at these activities) and on whether there are additional governmental regulations and industry or third-party standards which fulfill the mandate of a prevention program under section 112(r).

Tier 3—Full Rule. Tier 3 sources would be required to comply with the detailed prevention program of the rule, as finalized. The RMP would address hazard assessment, the prevention program, and the emergency response program. EPA intends that the final prevention program will be the OSHA PSM standard plus the requirement for a management system.

Discussion of Assignment to Tiers

Sources would be eligible for Tier 1 based on a demonstration and certification of no impact on public or environmental receptors. All other sources would be allocated to either Tier 2 or Tier 3. Tier 2 is a default tier for those sources not specifically assigned to Tier 3.

EPA's preferred approach would assign sources in specific four-digit SIC codes to Tier 3. To identify such SIC codes, EPA analyzed its ARIP database for the period from 1987 through 1993. EPA believes that SIC codes in which more than 10 sources with 100 or more full-time employees reported regulated substance releases (not limited to accidental releases under part 68) and more than 20 percent of such sources had releases that had impacts onsite or offsite would be candidate SIC codes for Tier 3 during the initial implementation of part 68. EPA also considered the quantities released and the number of sources in the SIC code as reported in Census data. EPA used some judgment when looking at SIC codes in Census data because the Census reports only the one SIC code per source that represents the greatest financial activity even when many SIC codes apply. Thus, the Census may be likely to understate the total number of sources in a 4-digit SIC code, especially in the chemical industry, because sources in certain industries typically involve many different operations. EPA believes that chemical releases that are not accidental releases and releases in which workers were injured should be included in an analysis of accidental releases for the purposes of section 112(r) because all such releases may indicate a failure of company safety practices. EPA requests comments on this conclusion and data indicating that this assumption is valid (or not) for the groups discussed below.

Based on the analysis described above, EPA identified eight four-digit SIC codes that have a release history that supports requiring sources in such codes to implement a Tier 3 program.

These SIC codes are: 2611 (pulp mills), 2812 (chlor-alkali), 2819 (industrial inorganics nec), 2821 (plastics and resins), 2869 (industrial organics nec), 2873 (nitrogen fertilizer), 2879 (agricultural chemicals nec), and 2911 (refineries). In all of these industries, the number of facilities reporting releases was more than 20 percent of the number in each SIC code using Census data.

Four industrial categories that EPA does not believe would be appropriate under the accident history criteria for Tier 3 are 2865 (cyclic crudes), 3312 (steel mills), 2816 (industrial inorganic pigments), and 4911 (electric utilities). Less than 20 percent of the releases reported from cyclic crude sources and steel mills had impacts. In the cyclic crude industrial category, while 16 sources reported releases (approximately 25 percent of the SIC code), only three sources had releases with impacts. The largest release at 11 of the cyclic crude sources exceeded 1,000 pounds, and three of these sources had largest releases exceeding 10,000 pounds. Given the size of releases from cyclic crude sources, EPA requests comments on whether they should be required to meet Tier 3 requirements. In the steel mill sector, while 18 sources reported releases (approximately 14 percent of the industry), only 3 had impacts. However, six of these sources reported releases exceeding 10,000 pounds. The industrial inorganic pigment industry was just below the candidate SIC code criteria for facilities reporting releases and percentage of impact releases. While nearly half the industry reported releases, only two facilities had releases that were more than 1000 pounds, and none had releases that exceeded 10,000 pounds. Although there were a high number of releases reported by electric utilities, only about 2 percent of the industry accounted for the reported releases.

EPA would initially limit Tier 3 to sources in the eight categories with 100 or more full-time employees because these sources have the most significant accident histories. However, certain smaller sources also have accident histories that would support eventual Tier 3 treatment. EPA conducted an analysis of sources with 20–99 full-time employees and identified five categories that, based on accident history, would become Tier 3 sources 8 years after promulgation: 2812, 2819, 2869, 2873, and 2911. The flammable substance accident history for refineries with 20–99 full-time employees supports eventually requiring these sources to comply with Tier 3. The four other industries all had a significant percentage of impact releases relative to the number of facilities reporting toxic releases. Three groups (industrial inorganics, industrial organics, and nitrogen fertilizer) had more than ten facilities reporting toxic releases, while two groups (chlor-alkali and nitrogen fertilizer) had more than 30 percent of the SIC code reporting releases. EPA may review this determination based on data gathered during the eight-year period. The full program would be phased in to allow these sources to benefit from the expertise gained by governmental agencies and larger industry during initial implementation of the full program; the phase in would also ease the cost burden on these smaller companies by giving them more time to implement the program. EPA would calculate full-time employees based on the definition in 40 CFR 372.3. Full-time employees would include contractors on site.

EPA also requests comment on a second approach to tiering. EPA would include in Tier 3 all sources with more than 100 FTEs. Larger sources not eligible for Tier 1 would be subject to Tier 3 because of the size of their operations and the likelihood that they have larger quantities of regulated substances on site, as well as because of their technical capabilities to undertake the program relative to most small manufacturers and non-manufacturers. EPA does not favor this approach, however, because many of these large sources do not have a significant record of accidental releases.

EPA requests comment on the two alternatives or on other criteria for placing sources in tiers under the risk management program. EPA may adopt, in whole or in part, any or all of the approaches to eligibility for Tier 2 in the final rule. The first approach focuses on industry segments that have a history of releases from a number of sources. This approach would remove from Tier 3 individual sources that may have had a history of accidents, but are part of sectors that have not had numerous accidents. It would also remove from Tier 3 entire sectors based on an accident history, which in the future may change. Should a change occur, EPA would revise the rule to include these sectors in Tier 3. Should such sources and segments be exempt from adopting process safety management principles until problems in the industry become pervasive? In addition to placing sources in Tier 3 based on industry segment, should a source be placed in Tier 3 if it has had one or more significant accidental releases in a five-year period? Conversely, should a source in an industry segment in Tier 3 be allowed to move to Tier 2 if it has not had a significant accidental release in the past five years? The Agency requests comment on the oversight and compliance burdens that would be placed on implementing agencies and sources by a site-specific tiering approach. Should proximity to significant numbers of people (either residential population, workers, or other people) be used (alone, or in conjunction with other criteria discussed above) to qualify a source for potential Tier 3 treatment? Should EPA structure the audit provisions of proposed § 68.60 to allow for implementing agencies to require Tier 2 sources to undertake more specific prevention activities if an audit uncovers inadequate risk management programs? Are there additional industries (two-digit or four-digit SIC codes) that should not be eligible for Tier 2 under either approach? Under approach 2, are there sources with more than 100 FTEs that should be eligible for Tier 2 because of industry-specific standards or the simplicity and nature of their processes? EPA believes the preferred approach is the most appropriate level for national implementation. EPA notes that state implementing agencies have the authority under the CAA to impose more stringent requirements.

Qualified Third Party. EPA is seeking comments on whether provisions should be made to employ a ''qualified third party,'' under implementing agency oversight, to assist certain regulated sources in achieving and maintaining compliance with the RMP rule. In raising this issue, EPA is cognizant of the recent National Performance Review recommendations to OSHA on the use of third parties, and growing reliance on ''qualified third parties'' to facilitate compliance with other regulations, to audit the performance of regulated third parties, and verify compliance status on a periodic basis. Such arrangements, thereby, assist both the regulated community and the regulating agencies in ensuring compliance with regulations. EPA requests comments whether to use qualified third parties for this program as well as specific suggestions on how appropriately to include qualified third parties in the present rulemaking.

One way to incorporate ''qualified third party'' review into the RMP tiering framework might be to assign certain sources that participate in the Voluntary Protection Program (VPP) to Tier 2. The VPP is a voluntary program sponsored by OSHA and industry that recognizes strong safety practices, including process safety management. Within

VPP, a ''Star'' rating indicates the highest level of worker safety practices in all aspects measured by the program, while a ''Merit'' rating indicates sound practices with specific qualifications. One commenter suggested that EPA should integrate Star and Merit status into the risk management program. It is not clear whether Star and Merit ratings are relevant to protecting the public and the environment from accidental releases because the VPP only directly measures worker safety impacts. EPA invites comment on whether a source that obtains Star rating or a Merit rating without qualifications related to process safety management should be eligible for Tier 2 even when it is part of an industry sector that otherwise is subject to Tier 3. Should implementing agencies and the public rely on Star or Merit status as a good indicator that the source poses a lesser risk of a significant accidental release than other sources in the same industry sector?

Comments on other types of ''qualified third party'' options to facilitate responsible self-enforcement of the RMP rule will also be useful, particularly as they relate to subsectors of regulated sources which have demonstrated the capacity for establishing and enforcing voluntary safety procedures, or to subsectors in which the regulated sources or their associations have indicated an interest in developing such capacity. Comments from state and local officials, emergency responders, and the public regarding the use of third party arrangements are sought.

B. Hazard Assessment

EPA received substantial comments on hazard assessment topics during the four public hearings, the comment period, and a one-day forum on worst-case scenarios. Commenters made the following main points:

- Commenters questioned the intended use of the worst case, arguing that EPA failed to provide a clear description of its purpose.
- Commenters questioned whether EPA would require sources to conduct separate analyses for each hazard for substances that are both flammable and toxic. Commenters suggested that the number of assessments could be limited by analyzing only the substance that has the potential for the most serious offsite impacts.
- Commenters stated that, although the proposed definition of worst case as instantaneous loss of the total contents of a process may be possible for sources that have simple systems, instantaneous loss of the total process contents is not technically feasible for complex systems and, therefore, would provide no useful information to the public or the source.
- Commenters stated that failure to account for at least well-designed passive mitigation systems reduces the incentive for installation of such systems.
- Commenters argued that EPA should specify in the final rule certain methodological assumptions that sources would use to analyze release scenarios.
- Several commenters argued that the worst-case meteorological conditions defined in the proposed rule (F stability and 1.5 meters/second wind speed) were too conservative.
- Commenters expressed concern that the results of the offsite consequence analyses would be difficult to compare between sources without specification of the assumptions.
- Commenters asked for clarification of what EPA expects sources to do to define offsite populations and environmental impacts.

Clarification of the Purpose of Worst-Case Analyses. Sources and the public need to assess and understand the extent of the impact associated with an uncontrolled major accident. EPA does not intend that worst-case analyses should be used as the sole or primary basis for emergency planning or accident prevention actions. The results of the worst-case analyses, in combination with other more likely release scenario assessments, as contained in the RMP, should be used to build a dialogue and a working partnership between the source and the public, response agencies, workers, and various levels of government for chemical accident prevention, response, and preparedness.

Worst-Case Release Definition

EPA is considering alternatives to the definition of worst-case release in proposed § 68.3. EPA is proposing to redefine a worst-case release as the release of the largest quantity of a regulated substance resulting from a vessel or process piping failure. The worst-case analysis would involve a 10-minute release under worst-case meteorological conditions (F stability and 1.5 meters per second wind speed) and would consider passive mitigation measures.

The 10-minute release time is used in the Technical Guidance for Hazards Analysis. EPA believes that this release duration is reasonable and accounts for comments arguing that an ''instantaneous'' release is not realistic. As described in the Technical Guidance, a 10-minute release is intended to represent modeling of a continuous release rather than a ''puff'' release. Therefore, for modeling purposes, the release rate (per minute) to the air for gases would be the quantity released divided by 10. Liquids would be assumed to form a pool in 10 minutes, with the release rate to the air determined by volatilization rate. This approach to liquid releases differs from that of the Technical Guidance, which specifies an instantaneous release. Alternatively, the Technical Guidance could be used, but no time frame would be specified; the liquid quantity would be assumed to form a pool for calculation of the volatilization rate. EPA requests comments on the appropriate release duration and justification for its basis.

EPA is considering the revision of proposed § 68.15(c) to incorporate the effects of passive mitigation systems, but not active mitigation systems, into the worst-case release scenario, if such systems are capable of withstanding destructive events (e.g., fires, explosions, floods, hurricanes, and earthquakes). Passive systems would include dikes, catch basins, and drains for liquids, and enclosures for both liquids and gases. EPA requests comment on its definition of ''passive mitigation system'' and requests examples of other such devices. Scenarios involving passive mitigation systems that have connections to the environment (such as a rainwater drain valve) would have to assume failure of that connection. The threat of natural disasters would be specific to certain geographic regions, and sources could certify that their passive mitigation meets or exceeds local natural disaster design standards as capable of withstanding destructive natural events. Underground storage tanks might also be considered a passive mitigation system for liquids to the degree that overlying soils would reduce the volatilization rate to the air in the event of a worst-case accidental release. However, overlying soil is not likely to contain high pressure gas releases. EPA requests comment on this issue.

Incorporation of passive mitigation measures into the worst-case release analysis could be left to implementing agency discretion. Such discretion would result in an increased administrative burden on that agency and cross-jurisdictional differences in the methodology used for worst-case analyses. EPA is considering allowing the incorporation of active mitigation measures in the hazard assessments for more likely accidental release scenarios.

EPA seeks comment on several possible ways to define the relevant quantity of regulated substance in a

vessel or process piping for a worst-case release scenario. One alternative would be to define the quantity as the maximum possible vessel inventory, without regard for operational practices and administrative controls. This quantity would represent a physical maximum, but would exaggerate the potential worst case for sources that never operate at the physical maximum inventory of the vessel. The process piping failure scenario would assume that the inventory contained in vessels or other process equipment on either side of the piping failure location would be released through the pipe break at full pipe flow.

A second, preferred alternative would be to require that the determination of the worst-case release scenario be based on the maximum possible vessel inventory unless there are internal administrative controls (written procedural restrictions) that restrict inventories to less than the maximum. The operational limit would be described in the worst-case release analysis in the RMP. Exceedance of any administrative control on vessel inventory would be a violation of § 68.15 (failure to perform a worst-case analysis) unless the administrative control was revised and the worst-case analysis updated to reflect any changes in the analysis. An exceedance would also result in a violation of § 68.50 unless the RMP was updated within the timeframes set out in that section. Acknowledgement of such administrative controls would reflect the efforts of sources that have intentionally reduced inventories of regulated substances for process safety reasons. EPA seeks comment on whether administrative controls are sufficiently reliable or whether a mechanical control should be required in addition to the administrative control.

A third alternative for defining the relevant quantity would be to base the quantity on historic or projected maximum operating inventories without regard for administrative controls. The maximum operating inventory would be specified in the RMP. Exceedance of the maximum operating inventory also would be a violation of §§ 68.15 and 68.50 as described above. EPA does not favor this third alternative because it does not believe that historic or projected operating practices represent the maximum possible amount of a chemical that could be stored in a vessel unless there is a specific management operational restriction at the source.

EPA is also considering providing the implementing agency with the discretion to determine the appropriate quantity for the worst-case release scenario on a site-specific or industry-specific basis. Implementing agency discretion would result in an increased administrative burden on the implementing agency and cross-jurisdictional differences in the methodology used for the worst case analyses. EPA also requests comment on whether the scenario should consider the additional amount of substance that could potentially drain or flow from process equipment interconnected with the failed vessel or pipeline.

Applicability of the Hazard Assessment Requirements

A number of commenters stated that multiple analyses of similar substances would not improve the information provided to the public. EPA is proposing the following requirements for substances and processes affected by the rule:

- A single worst-case release scenario would be analyzed for all flammables on site; only one flammable substance would be analyzed for other more likely scenarios as well;
- A single worst-case release scenario would be analyzed for all explosives on site; only one explosive substance would be analyzed for other more likely scenarios as well; and
- A single worst-case release scenario would be analyzed for all toxic substances at the source; other more likely release scenarios would be analyzed for each toxic substance covered by the rule.

The appropriate hazard category would be the hazard for which the regulated substance was listed. This proposal would reduce to a maximum of three the number of worst-case analyses required of each source in the RMP. Additional screening analyses to determine the appropriate worst-case scenario may be necessary, but only one worst-case release scenario would be reported for each hazard category. Sources would, within the constraints of the worst-case release definition, describe the greatest offsite impacts presented by potential catastrophic accidents involving regulated toxic, flammable, and explosive substances. The potential worst-case impacts of substances and processes not described in the RMP would be less than those described. As an alternative, EPA could require analysis of only one worst-case scenario by each stationary source. This approach would require the analysis of the one scenario that presents the worst offsite consequences. A significant drawback to a one-scenario analysis is that the different types of worst-case hazards (for toxics, flammables and explosives) would not all be described.

EPA would require more likely release scenarios per hazard category for flammables and explosives, but per substance for listed toxics. Toxic substances each have different exposure concentrations of concern, but flammables and explosives can be treated uniformly within hazard categories. EPA seeks comment on whether a single toxic substance could be considered representative of all toxic substances at a source or in a process.

Hazard Assessment Methodology and Calculations

EPA intends to develop ''lookup'' tables for all listed substances to assist sources in determining the impact distances for their release scenarios. The tables will specify potential impact distances for releases of substances under conditions that are relevant to dispersion. Sources will only have to define their release scenarios and develop the information, such as release rate, needed to use the tables. The tables will provide impact distances that sources can then map. For explosives, the American Table of Distances will serve as the lookup table. For toxics and flammables, the lookup tables will be developed and made available for public review and comment prior to the publication of the final rule. The tables, and accompanying guidance, will represent a revision of the Technical Guidance for Hazards Analysis. The tables will provide distances under varying conditions, including worst-case. In developing the tables, EPA will select one level of concern value for each toxic substance. EPA seeks further comment on whether it should use a single endpoint to the extent possible to develop the tables (e.g., the 1/10 IDLH unless one does not exist for a substance), or a hierarchy of endpoints (e.g., ERPG–3; if one does not exist, then the 1/10 IDLH; and finally toxicity data if no other value is available). For flammables, should EPA use overpressure or both overpressure and radiant heat effects as endpoints? EPA requests comment on the lookup table approach. The tables and the methodology used to develop them will be made available for public review and comment.

The purpose of providing lookup tables is three-fold. First, if each source conducts its own dispersion modeling, the results will be extremely difficult to compare among sources; different models and different assumptions can produce widely varying results. Second, because of the differences in models and the impact of changing assumptions

(e.g., a different wind speed), the results of dispersion modeling are best used to provide a general idea of impact; models do not have a level of predictive accuracy that can reliably differentiate between, for example, a release with a four-mile zone and one with a five-mile zone. Third, dispersion modeling is expensive, especially for sources that are outside of the chemical industry. Given that the results of sophisticated modeling may not be more accurate than results derived from simple tables, EPA decided that a simpler approach that would provide comparable data among sources was preferable. Sources that wish to conduct more sophisticated modeling may, but would not be required to do so, under the rule. For sources that want to do modeling, a number of models available in the public domain exist; EPA has published guidance on the use of these models. An alternative approach would be to limit use of the lookup tables to Tier 2 sources and require Tier 3 sources to conduct air dispersion modeling. EPA requests comments on this alternative.

Offsite Consequence Analysis

EPA agrees with commenters that further direction is necessary with respect to assessments of potentially affected populations and the environment. Section 68.15(e)(3) of the proposed rule requires an analysis of populations within distances of potential exposure. The preamble to the proposed rule specified that sensitive populations potentially affected by a release should be identified. Although much of this information is readily available, identification of some sensitive populations, such as day care centers and nursing homes, could require considerable effort, especially where the vulnerable zone crosses several jurisdictions. In addition, sources in the same area would be required to duplicate each other's efforts.

To limit the effort required to define offsite populations, EPA is proposing that offsite populations be defined using available Census data. Information on the number of children and people over 65 may be considered a proxy for sensitive populations. With the assistance of the Bureau of the Census and NOAA, EPA is developing a geographic information system, LandView, that will facilitate analysis of resident populations. In addition, EPA may require sources to identify public arenas or institutions that are potentially affected. These arenas or institutions would be limited to those identified on available street maps or Census TIGER files.

EPA has proposed that sources analyze both potential human health impacts and environmental impacts in hazard assessments and consider such impacts in designing prevention and response programs. ''The environment'' is specifically mentioned twice in section 112(r)(7)(B) as a receptor to be protected by emergency response measures. First, section 112(r)(7)(B)(i) states that regulations under subparagraph B ''shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment.'' Second, under the response program provisions of the risk management plan, the plan must address ''specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment.'' Also, a third reference to ''the environment'' is ambiguous and may refer not only to response measures, but also to other aspects of risk management plans (CAA 112(r)(7)(B)(ii)).

The structure of the CAA's accidental release provisions integrates the assessment of potential hazards and the prevention of accidents with response planning to prevent potentially hazardous conditions from resulting in accidents and ensure that the response measures are adequate in the event of an accidental release. EPA supports this integrated approach to planning with respect to accidents. EPA believes it is reasonable for sources to address not only human health impacts, but also environmental impacts in the hazard assessment. In light of the mandatory CAA language requiring that the environment be addressed as a receptor for purposes of emergency response, EPA invites comments on this approach.

EPA recognizes that one of the concerns of commenters about addressing the environment in a hazard assessment was that the proposed rule discussion of environmental impacts was not specific enough. Consequently, EPA would revise § 68.15(e)(4) of the proposed rule to require identification of sensitive environments (rather than analysis of potential environmental damage) within the radius determined by the worst-case and more likely accidental release scenario analyses. In addition, EPA would revise § 68.15(h)(3)(v) to require sources to list the sensitive environments within the accidental release scenario radii in the RMP. To identify receptors, the source could call the appropriate state or Federal agencies to determine if any sensitive environments were within the impact distances.

EPA requests comments on the use of all or part of Appendix I of the NOAA Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments (59 FR 14714, March 29, 1994) for determination of sensitive environments. Appendix I lists the following sensitive environments and identifies responsible Federal agencies: wetlands (as defined in 40 CFR part 230.3); critical habitat for designated or proposed endangered/threatened species; habitat used by designated or proposed endangered/threatened species or marine mammals; national marine sanctuaries; national parks; Federal wilderness areas; national estuary program areas; near coastal waters program areas; clean lakes program critical areas; national monuments; national recreational areas; national preserves; national wildlife refuges; coastal barrier resource system; national river reach designated as recreational; Federal or state designated wild and scenic rivers; national conservation areas; hatcheries; waterfowl management areas; cultural resources; areas of critical environmental concern; and the national forest system. Accidental releases of volatile substances may not represent a major threat to certain of the sensitive environments listed above. For example, wetlands, national marine sanctuaries, national monuments, national estuary program areas, near coastal waters program areas, and clean lakes program critical areas may not be threatened by accidental releases to the air. They could, however, be threatened by volatile liquid releases. In addition, deposition of listed substances from accidental releases of toxics to the air could also represent a threat to these sensitive environments. EPA requests comment on whether these, and other, specific sensitive environments should be removed from consideration for identification of sensitive environments.

C. Accident Information Reporting

The proposed rule addresses emergency notification (§ 68.45(b)) and self-investigation of accidental releases (§ 68.40). However, other than the five-year accident history in the RMP and emergency reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA, sources are not required to report any accident data or results of accident investigations. Certain accidental release information that otherwise is not available could be useful to states and EPA to learn which types of sources are having problems, understand more about accident causes, track trends in chemical accidents and

prevention activities, monitor the progress of the risk management program, focus future prevention activities, and avoid overregulation of industry sectors or substances.

EPA is evaluating how such accidental release information needs might be met so as to impose a minimal burden on sources and avoid redundancy. One approach would be to require submission of information on any accidental release of a regulated substance if the release results in death, injury, evacuation, property damage, or offsite environmental impacts. If the source experiencing such an accident is subject to the OSHA PSM requirements or Tier 3 requirements described above, then the owner or operator could submit to EPA and the state a copy of the accident investigation report generated under 29 CFR 1910.119(m)(4) or 40 CFR 68.40. For sources not subject to these requirements, or alternatively all sources, owners or operators could submit an accidental release information survey form to collect a brief, but accurate description of the event and its consequences, the substance and amount released, root causes, initiating events and contributing factors causing the release, and changes or potential changes at the source to prevent a recurrence. EPA requests specific information on the types of questions that should be included. EPA also seeks comments on which accidents should be reported (e.g., should any investigated deviation be reported?), reporting triggers (e.g., threshold quantities or reportable quantities released), whether reporting formats can be used to streamline or eliminate duplicative reporting, and if the submission of these data raises liability concerns.

Another approach EPA is considering would be to have EPA request information developed under existing regulations, such as OSHA PSM accident investigation requirements or EPCRA section 304 follow-up notices. Under this approach, sources would not need to develop any new information for EPA, but could provide EPA with documents prepared under other regulations. EPA could supplement such information as necessary by undertaking surveys to acquire specific data on accidents based on these existing documents. EPA requests comment on this approach. Specifically, EPA seeks information on what the appropriate mechanism for obtaining data on accidents would be.

The approach outlined above would not affect a source's current obligations to report releases of certain regulated substances under CERCLA section 103 or EPCRA section 304. For purposes of CERCLA section 101(10)(H), part 68 is not a control regulation, and the RMP is not a permit allowing the accidental release of any specific quantity of a regulated substance.

D. Public Participation

A number of commenters have asked that EPA require sources to involve the public in development and review of the risk management program. Several commenters have identified key points at which public involvement is appropriate, including at the outset of the planning process, upon completion of the process hazard analysis (PHA), prior to submittal of the RMP, prior to RMP revisions, after an accident, after an accident investigation, and during response drills involving action outside the plant.

EPA believes that the public is a key stakeholder in preventing chemical accidents and that sources have the responsibility to make the public aware of the hazards associated with potential accidental releases. EPA is committed to encouraging public involvement. EPA's favored approach would encourage sources to use existing groups, primarily the local emergency planning committees (LEPCs), as a conduit for communications between the source and the public. Many sources covered under part 68 are already obligated to participate on, and perform emergency preparedness and planning activities with their LEPCs under EPCRA. In areas where there is no functioning LEPC or its equivalent, sources, local first responders, citizens, and others need to develop and support the LEPC or its equivalent. EPA expects sources to work with the LEPC during the development of the RMP as well as after its submission. Similarly, EPA expects the public to contact the LEPC for information from the source whenever it has questions or concerns. EPA notes that the RMP is not a one-time document; the RMP reflects the risk management program at the source and will change as activities at the source change. Sources, therefore, should be involved in a continuing dialogue with the LEPC about the prevention and emergency response programs as they evolve to address changes at the source. EPA prefers this approach because, just as one size of risk management program is not appropriate for all sources, a rigid set of public participation requirements would not be reasonable for all sources.

A second approach would require a source to take steps to involve the public in discussions concerning the content of its RMP and describe those steps in the RMP. EPA would not specify the steps, but would provide guidance on ways a demonstration could be made. The source could describe its community outreach efforts during the planning process in on-site records that would be available to the public or could summarize these activities in the RMP. Similarly, a source could maintain a record on site of community outreach actions taken after submittal of the RMP. EPA would provide guidance on ways such a demonstration could be made. For example, sources could choose to notify the public through a general circulation newspaper that the RMP was available and make copies available; the source could publish the RMP in a newspaper or on electronic bulletin boards; or the source could hold a public meeting on the RMP or use local TV public service channels to target a local audience or to broadcast logistics for upcoming meetings. EPA requests comment on whether public participation activities should be limited to Tier 3 sources. Another suggested approach for public participation was to allow the public, by petition, to trigger audits of completed RMPs by the implementing agency. EPA does not favor this approach because it could generate an excessive burden for implementing agencies.

E. Inherently Safer Approaches

The manufacture, processing, and use of chemicals is inherently risky. EPA believes that fulfillment of the risk management program requirements entails ongoing attention to hazard identification, hazard analysis, risk management (assessment, reduction and control, or elimination), and public outreach. This process should lead to continuous improvement and the evolution of safer sources through a wide range of actions involving reduction of the inherent risk and control or mitigation of the hazards. During the proposed rule hearings, several presenters argued that, like pollution prevention, accident prevention could be more successful if the program were to focus on the elimination of hazards to make processes inherently safer rather than on an attempt to control or mitigate existing hazards. It was suggested that sources be required to examine different approaches or technologies through a process of technology options analysis (TOA), or a ''state-of-the-art'' search and analysis of safety alternatives as required by New Jersey in its Toxic Catastrophe Prevention Act regulations, to find, and adopt, inherently safer chemical pathways and processing techniques. In addition to TOA and state-of-the-art searches, the Center for

Chemical Process Safety has published a guideline containing a checklist for evaluating the inherent safety of processes (Guidelines for Engineering Design for Process Safety, CCPS, 1993). Commenters suggested that EPA formalize the search for alternative technologies by making TOA or similar reviews a required part of PHAs and by requiring sources to document and share the results in the RMP.

Such costly analyses are probably best conducted during the design of new processes, when, according to industry commenters, they often are already part of the design process to identify cost-effective approaches to improving safety. In addition, if alternative technologies are discovered, whether for new or existing processes, further analysis is necessary to determine whether risks are inadvertently being transferred by the new technology from one location to another. Adoption of new technologies without such analyses may inadvertently impose greater individual or societal risk. EPA recognizes, however, that there are many opportunities to make processes inherently safer without large-scale adoption of new technologies. These opportunities may become apparent through the PHA. Some sources have already performed such analyses and have successfully taken action to make their processes inherently safer. Consequently, EPA does not favor inclusion of a specific requirement in the initial program for an analysis of the inherent safety of processes or for adoption of new technologies. EPA, however, strongly encourages industry to consider implementing inherently safer approaches when appropriate and include a discussion of any such studies and actions it takes in RMP updates. EPA is considering further study of this issue with all stakeholders and requests comment on this issue.

F. Implementation and Integration of Section 112(r) With State Programs

Section 112(r) places responsibility on sources to prevent accidents and share information about their accident prevention efforts. However, EPA believes, and Congress intended, that successful chemical emergency prevention, preparedness, and response efforts require active state and local involvement. The legislative history and CAA section 112(r) requirements support and build on the existing state and local infrastructure by requiring that RMPs be submitted to states and local planning entities. [See, e.g., S. Rep. No. 228, 101st Congress, 1st session, at 193 and 225.] EPA encourages and supports any state or local efforts to develop comprehensive plans for coordination and integration of section 112(r) with state and local programs mandated under the CAA, EPCRA, and other environmental statutes and planning and safety programs under OSHA and other agencies.

The ways in which state and local organizations are, or could become, involved in the implementation and integration of section 112(r) are described in more detail below. About 15 percent of the sources subject to the section 112(r) requirements will already have or will need to get operating permits from state air permitting authorities under part 70 by the time the RMPs are due. In the final part 68 rule, EPA intends to clarify the responsibilities of sources subject to part 70 permitting requirements and section 112(r), the air permitting authority with respect to section 112(r), and state or local agencies who elect to implement section 112(r) for all other sources. EPA worked closely with and directly involved several state and local air program officials and state emergency response and prevention representatives in the development of the preamble and regulatory language to prepare approaches detailed in the following sections. These approaches best reflect the concerns of the states about air permit program implementation and the needs for comprehensive participation in chemical accident prevention, preparedness, and response at the state and local level.

Applicable Requirements and Permitting Authority Responsibilities for Section 112(r)

Under CAA section 504(a) and EPA's implementing regulations (§ 70.6(a)(1)), part 70 permits must contain conditions sufficient to assure compliance with all CAA applicable requirements. Part 70 defines ''applicable requirement'' to include any standard or requirement of section 112, and includes any requirement concerning accident prevention under section 112(r)(7).

In the preamble to part 70 (57 FR 32275, July 21, 1992), EPA stated its belief that section 112(r) was not intended to be implemented or enforced primarily through part 70 permits. EPA cited the provisions of section 112(r)(7)(F), which provides that, notwithstanding title V, no source must obtain a permit solely because it is subject to the requirements of section 112(r). The part 70 preamble stated that it was sufficient for a part 70 source subject to 112(r) to ''indicate in its permit [application] that it has complied with any requirement to register an RMP, or alternatively to indicate in its compliance plan and schedule of compliance its intent to comply with such requirement.'' Thus the preamble set forth the view that all that was required of a part 70 source with respect to 112(r) was a statement in its permit application that it has registered the RMP or has submitted a schedule to do so. By stating explicitly that section 112(r) requirements were not to be implemented or enforced primarily through the permit, the preamble defined a narrow role for the permit: one of ensuring submittal of the RMP, but not ensuring the quality of the RMP or the implementation or enforcement of section 112(r) regulations in any particular way. The preamble also did not say what conditions must be in the permit to assure compliance with applicable 112(r) requirements (even though the preamble went on to provide that the RMP itself need not be included in a title V permit). Finally, the preamble was silent on the issue of responsibilities the permitting authority might have in assisting the implementing agency in assuring compliance with section 112(r) requirements.

This view was necessarily preliminary, since it was developed before any part 68 rulemaking that could clarify how the permit must assure compliance with ''applicable requirements'' relative to section 112(r). The part 70 preamble does not preclude part 68 rulemaking from clarifying and even expanding the responsibilities of permitting authorities (e.g., a completeness review of the RMP) with respect to implementation of section 112(r) requirements through part 70 permits.

Today's proposal would go beyond the part 70 preamble, principally by setting forth the part 70 measures necessary to ''assure compliance with'' applicable section 112(r) requirements. In addition, today's proposal would establish limits on the responsibilities of the air permitting authority for assuring compliance with section 112(r) within the part 70 program as opposed to the greater responsibilities envisioned for an implementing agency.

''Applicable Requirements'' for Part 70 Sources

One principal objective of the regulations proposed today is to clarify the minimum content of part 70 permits with respect to section 112(r) ''applicable requirements.'' EPA also intends to revise the definition in part 70 of ''applicable requirement'' relative to section 112(r). This definition will include the requirements of part 68,

when promulgated, to which part 70 sources are subject. EPA expects to define this term to mean §§ 68.10 to 68.58 or specific provisions within those sections. The part 70 rulemaking would be done as part of the phase II rulemaking addressing remaining issues raised by the part 70 litigants. This rulemaking is expected to be proposed this fall and finalized in early 1996.

EPA does not believe that each permit must restate every requirement in section 112(r) or part 68 as a permit condition to comply with the part 70 applicable requirement definition. The permit could instead meet this requirement by containing a set of standard conditions that require compliance by the source with applicable section 112(r) requirements.

These permit conditions are proposed in § 68.58 and would require that each permit contain, at a minimum, conditions that require source action consistent with the following:

(1) Registration with the implementing agency (EPA or the appropriate state or local agencies) and submittal of an RMP, or a revised plan, to the part 70 permitting authority or other state or local agency designated by the state for this purpose, by the deadline under this part and certification upon submission that the plan is complete and accurate;
(2) Submittal of any additional information required for completeness;
(3) Annual certification of implementation of the risk management program as described by the RMP; and
(4) If the permit is issued prior to the RMP submittal date, a compliance schedule for submittal of the RMP.

In addition, the RMP would be a reporting and recordkeeping requirement under part 70. There is no requirement to include the RMP in the permit.

EPA proposes that a ''complete'' RMP would be one certified by the source to contain all necessary elements in sufficient detail to meet part 68. The necessary elements of an RMP are contained in proposed § 68.50, and new §§ 68.13 and 68.14. As general criteria for completeness, an RMP would need to address all aspects of the three main elements of the risk management program, i.e., hazard assessment, prevention program, and emergency response program. EPA intends to issue guidance to assist sources and permitting authorities in determining completeness of RMPs, including a checklist addressing the required elements of an RMP.

The completeness review of the RMP would be independent of the completeness determination for the permit application. While the RMP may be submitted with the permit application, in most situations the RMP will be submitted separately on its own deadline, since almost all permit applications will have been submitted well in advance of the RMP deadline. Accordingly, if another state or local agency has received 112(l) delegation as the implementing agency for section 112(r), EPA presumes that agency, under a cooperative agreement with the permitting authority, could determine completeness of the RMP. In this situation, the state should establish appropriate procedures to ensure review of the plan for completeness. For example, the agreement could specify that the permit authority would not be obligated to review the RMP for completeness and could write the permit to require submittal of the RMP only to the state or local implementing agency, rather than to the permitting authority. Or, the state might decide that the permitting authority should retain the responsibility to review the RMP for completeness, even if another state or local agency has been designated as the implementing agency. EPA requests comment on this approach and whether a designated agency should also include EPA, provided that EPA and the permitting agency agree that EPA should take on the completeness review responsibility as the implementing agency.

The proposed permit conditions should ensure a complete RMP submittal, because failure to comply with these conditions would be enforceable as a permit violation. Other permit conditions would call for the source to submit a compliance schedule if it has not yet completed its RMP, to provide any information requested to determine the RMP's completeness, and to revise, update, and resubmit existing RMPs according to part 68 criteria. For example, when a source covered by section 112(r) and part 70 revises its process to add or eliminate a regulated substance, the source would need to prepare a revised RMP according to § 68.50(h) and submit it to the air permitting agency within 6 months. Failure to do so would potentially be a violation of both parts 68 and 70. Further, the permit would require a certification of the source's implementation of its risk management program, as described by the RMP. With the possible exception of the compliance schedule, EPA believes these permit conditions will be standard terms applicable to all part 70 sources subject to 112(r). EPA believes these standard terms would live on in the permit after submittal of the RMP, and there would be no reason to change them after an RMP is submitted or revised.

EPA is not proposing any specific requirements for part 70 permit applications beyond those already required in § 70.5, particularly the requirements that sources must cite and describe all applicable requirements, certify compliance with those requirements, or submit compliance schedules as necessary. Sources that submit applications after promulgation of part 68 would cite and describe part 68 as the applicable requirement, certify compliance (or that the source will comply in the future), and submit a compliance schedule for meeting section 112(r) deadlines. Sources that handle greater than threshold quantities of section 112(r) regulated substances should be able to identify themselves as potentially subject to section 112(r) in their initial part 70 applications. EPA is not requiring that the RMP be submitted with the permit application. Given the expected promulgation date of part 68 and the three-year compliance date for submittal of the RMP, EPA expects submittal of permit applications and issuance of most permits will occur long before the submittal deadline for RMPs (with the possible exception of part 70 programs with source-category limited interim approvals where it could take five years from interim approval to issue all permits).

EPA also believes it is not necessary to require submittal of the RMP as a permit revision at the submittal deadline for the RMP. EPA is concerned that permitting authorities may be required by state law or regulation to process the application and to incorporate RMP information in the permit if the RMP were included as part of the formal permit application. This result obviously would not be desired. The purpose of reviewing the RMP for completeness is to obtain a complete RMP, not to initiate any form of permit action. EPA seeks comment, however, on whether it should require the RMP as part of the permit application, or as an addendum to the application or to allow the permitting authority the option to ask for the RMP in either form for permit applications after the date plans must be submitted.

Role of Part 70 Permitting Authority

Under today's proposal the part 70 permitting authority or the designated agency (for completeness review) would be responsible for:

(1) Verifying that an RMP was submitted when required and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;
(2) Verifying that the source has submitted an annual certification that it is properly implementing a risk management program as required by part 68 and as described by the RMP;
(3) Taking enforcement action (including penalties) for failure to submit a complete RMP revised plan, or the annual certification; and
(4) Incorporating and enforcing permit conditions specifying a compliance schedule for submittal of a complete RMP.

These four tasks are the extent of the responsibilities of the permitting authority, unless it is granted delegation under section 112(l) as the implementing agency. Tasks (1) and (2) could be transferred to another state or local agency designated by the state under a cooperative agreement.

The first task of the permitting authority or designated agency would be to determine if the RMP is complete. The permit would require the source to submit the RMP by the part 68 deadline; part 68 would require the source to certify as to the RMP's completeness. If the RMP or any revisions were determined to be incomplete, the permitting authority or designated agency would notify the source that the submittal was incomplete, state the deficiencies, and give the source a deadline to submit the requested information and/or revise the RMP. EPA requests comment on the definition of a complete RMP.

The obligation to submit an RMP to the permitting authority or designated agency is a reporting requirement of a permit, but the contents of the RMP are not permit terms or conditions. Under today's rule, the completeness determination required under proposed § 68.58(b)(1) is independent of the completeness determination required by CAA section 502(b)(6). It is not necessary for the permitting authority to provide public notice of completeness findings. The permitting authority may, however, wish to document and provide the public with a notice of completeness findings using electronic bulletin boards or other mechanisms. EPA seeks comments on this approach. EPA also seeks comment on whether it should establish deadlines for the determination of completeness by the permitting authority. EPA could select the 60-day deadline used for part 70 application completeness; however, EPA is aware that some states may find this deadline too short if a high number of part 70 sources are subject to 112(r). EPA solicits comments on other possible deadlines: six months, one year, or by permit renewal.

The permitting authority or designated agency must be able to determine if a source is subject to the requirement to submit an RMP. EPA believes that this capability is already required under part 70 since, under that regulation, a permitting authority must be able to ask for any specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements [§ 70.5(c)(5)]. Thus, if a source fails to mention whether it is subject to 112(r) in its permit application, the permitting authority must have the authority to ask for information on the application to determine section 112(r) applicability. This information must be included in permit applications due before the promulgation of part 68, since the permitting authority or designated agency must determine which permits will require reopening after part 68 is promulgated if standard permit conditions reflecting part 68 are not added. EPA believes this approach is sufficient and is prepared to rely on the resourcefulness of permitting authorities in identifying sources subject to 112(r), but solicits comment on whether EPA should make more specific demands of permitting authorities in determining applicability with respect to section 112(r) requirements.

The implementing agency will have the authority under § 68.60 to require revisions to the RMP. Permitting authorities may find, as a result of the completeness review or during regular part 70 inspections, that revisions are necessary. The permitting authority should share this information with the implementing agency for appropriate action. The implementing agency should also share findings from RMP reviews and source audits with the permitting authority. EPA requests comment on whether the permitting authority should be able to require sources to make revisions to an RMP whenever the permitting authority determines revisions are necessary.

In light of the possibility that at least some permitting authorities may need to expand their capabilities to meet these new responsibilities, states should reexamine several aspects of their current part 70 program. First, states should assess whether they have adequate legal authority to review RMPs for completeness, or to require their submission if not part of a permit application. Second, states should determine if they have adequate statutory and regulatory authority to determine whether a source is subject to part 68. This authority may be vested in an emergency response agency. Third, many permitting authorities may face resource or budget constraints if additional workload were taken on to implement section 112(r) requirements. This might require an adjustment in fee schedules, because there is no reason to assume a decrease in other workload costs. States may wish to consider raising title V fees for all sources, raising permit fees only for sources subject to both parts 70 and 68, or imposing a fee on all sources subject to part 68 to provide resources for state and local program implementation. Permitting authorities may be limited on the amount of fees collectable for permit activities. EPA requests comment on alternative funding mechanisms or the resource reductions in other programs that may be necessary to complete the responsibilities described in this notice. Fourth, some permitting agencies may need to obtain technical training in the implementation of section 112(r) requirements. EPA intends to provide training and technical assistance to implementing agencies and permitting authorities.

Given these expectations, EPA is prepared to presume that approved part 70 permit programs are adequate to carry out the additional section 112(r) requirements proposed today, unless the Agency receives specific information to the contrary. EPA also assumes that if modifications to state part 70 permit programs are necessary, they can be made with minimal burden.

Finally, under the CAA provisions, permitting authority liability would generally be determined by state law. Congress's intent in enacting section 112(r) was not to expand liability for any government entity. Liability associated with implementation of section 112(r) is addressed below.

Incorporation of Part 68 Requirements Into Part 70 Permits

According to the CAA, once part 68 requirements are promulgated, existing sources have three years to comply with these requirements. New sources constructed after promulgation of part 68 must comply by three years after promulgation except that sources constructed later than 3 years after promulgation must comply upon startup. However, until the risk management program rule is promulgated, the only applicable requirement for sources is the List of Regulated Substances and their Thresholds rule under section 112(r)(3)–(5). Thus, EPA expects that when a

source submits a part 70 application before part 68 is final, it would identify to the permitting authority those activities at the source that are subject to the part 68 requirements according to the list rule criteria, but state that the risk management program requirements are not yet applicable to it. This identification is consistent with the requirement in § 70.5(c)(5) for the permit application to include specific information necessary to determine whether the source is subject to applicable requirements.

Permits issued before promulgation of part 68 will presumptively need to be reopened at the time of promulgation of part 68 and revised within 18 months to include the part 68 permit requirements. Alternatively, the permitting authority could place the standard part 68 permit conditions in a permit issued before promulgation of part 68 and make the conditions effective upon promulgation of part 68. Unlike most MACT standards, EPA believes the part 68 permit requirements will be essentially standard conditions with little source-to-source variation. Consequently, incorporating part 68 requirements (unless they were included during initial permit issuance) should require only the part 70 administrative amendment process. As proposed in the part 70 revisions for MACT standards, the permitting authority or designated agency should provide to the public a list of sources whose permits are proposed to be reopened. Public comment on the list of sources could help the permitting authority identify other sources subject to section 112(r).

Reopened and reissued permits would include all permit requirements of § 68.58, including a compliance schedule for submittal of the RMP according to part 68 deadlines. After part 68 is promulgated, part 70 permits and applications will be required to contain compliance schedules which, in part, require the submittal of a complete RMP.

Solicitation of Comment on Alternatives

Although no specific alternatives are proposed, EPA seeks comment on two other approaches for the definition of applicable requirements, permitting authority responsibilities, and permit content with respect to section 112(r). EPA will consider various alternatives offered by commenters between these two approaches as alternatives to the approach described above.

The first option places no additional responsibilities on the permitting authority beyond those set forth in EPA's guidance contained in an April 13, 1993, policy memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors (available in the docket). In that memorandum, EPA required part 70 permitting authorities to obtain legal authority sufficient to: (1) Determine whether a source is obligated to register and submit an RMP; (2) secure verification from part 70 sources that any required submittal was prepared and submitted; (3) obtain annual certifications from sources that the plan is being implemented; and (4) include as a permit condition a compliance schedule for submitting a plan if the source fails to submit the plan when originally due. Unlike today's proposal, this option does not require the permitting authority to determine completeness of the plan. It does not make specific requirements with respect to the content of part 70 permits. This option would not rely significantly on part 68 to expand or clarify the April 13 guidance.

An advantage of this approach is that it imposes no additional expectation on part 70 agencies or sources subject to both part 68 and part 70 beyond the April 13, 1993, policy memorandum. Therefore, permitting authorities would not be expected to reassess current legal authority, resources or fee structure for adequacy in implementing section 112(r).

However, the April 13 policy guidance was prepared before the risk management program rule was proposed and before public comments were received indicating that the relationship between part 70 and part 68 was not clear. Further, the April 13 criteria do not account for implementation of the risk management program by the source (as opposed to implementation of the plan) and there is no review of the RMP by the permitting authority to ensure that the plan contains the elements required by part 68. Consequently, in a June 24, 1994, memorandum (available in the docket) from John Seitz and Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office (CEPPO), to EPA Regional Division Directors, EPA indicated that the ''approval criteria in the April 13 memorandum * * * may not be sufficient to ensure compliance with all 'applicable requirements' established in the risk management program rule.'' By not requiring a review of the RMP for completeness or setting forth standard permit conditions that would assure compliance with part 68, the permitting authority's role in implementing section 112(r) relies mainly on the certification of submittal of the RMP by the source. Air permitting authorities would be unable to assure compliance with the requirements of part 68 as required unless another state or Federal implementing agency agrees to become the designated agency for that state and is willing to certify for the air permitting authority that the RMP is complete. Such a program may fall short of minimal title V statutory requirements of assuring compliance with all applicable requirements. The Agency requests comment on whether the permitting agency may be able to satisfy title V by certification by the implementing agency.

A second approach at the opposite end of the spectrum would require permits to address all the hazard assessment, prevention program, and emergency response program activities under part 68, in addition to the registration, RMP submission, program implementation and plan revision requirements. Each requirement in part 68 would be specified as a permit condition. For example, the permit would include a requirement for pre-startup safety reviews of all process changes or that accidental release mitigation equipment at the source (e.g., spray curtains) be tested monthly. Upon part 68 promulgation, all existing permits at part 70 sources would need to be reopened to add permit conditions relative to section 112(r). The permitting authority would need to examine carefully each RMP and risk management program at each permitted source to make sure it is complete and to craft the permit conditions specific to each source and then issue a new permit. Permitting authorities would be expected to perform periodic inspections of each permitted source to verify whether the risk management program was being implemented as described by the RMP, to examine program implementation to verify compliance with permit conditions, and to determine whether the RMP needed to be revised as a result of permit conditions or changes at the source.

This approach would be consistent with approaches for implementation of emission standards or other air toxics provisions under titles III and V of the Clean Air Act because it would consolidate the essential elements of the source's compliance requirements in the permit and would ensure the full involvement of the permitting authority in chemical accident prevention. It also would provide significant enforcement leverage through the permit and through inspections to ensure compliance with the source's risk management program and with the part 68 requirements.

This approach still does not call for the permitting authority to perform

audits or to examine the quality of the RMP or program, which EPA believes is the responsibility of the implementing agency. It does, however, impose considerable resource and expertise burden on the permitting authority. EPA does not believe it is appropriate to include risk management program elements as permit conditions since these elements will be highly source-specific and subject to change as the source develops and implements its program. The permit would need to be changed every time the program or plan changed. This approach appears to go well beyond the need for part 70 permits to assure compliance with applicable section 112(r) requirements and duplicates other local, state, and Federal efforts.

There may be alternatives to the two extremes described in this section and to the proposed approach. EPA requests comment on other alternatives. EPA also requests that if other approaches are offered, commenters address the advantages and disadvantages of the approach with respect to the parts 68 and 70 programs and to the overall chemical emergency prevention, preparedness, and response effort.

Implementation of Section 112(r) for All Sources

Congress intended a Federal-state partnership in implementing all of section 112, including section 112(r). The implementation envisioned by Congress for accident prevention focuses on coordination and sharing of accident prevention information among various state and local agencies within the same state. Implementation of section 112(r) means that the implementing agency takes responsibility for the compliance and enforcement of section 112(r) requirements. Further, section 112(r)(7)(B)(iii) indicates that EPA shall establish, by rule, an auditing system to review regularly and, if necessary, require revision in RMPs. Although permitting authorities are responsible for assuring part 70 source compliance with part 68 requirements, EPA believes that the implementing agency should take responsibility for RMP reviews and audits. Consequently, EPA believes the implementing agency must: (1) Receive part 68 registrations; (2) inspect sources for compliance, regulatory development, and enforcement; (3) receive, review, and periodically audit RMPs according to § 68.60; and (4) require revision of plans when necessary to ensure compliance with the requirements of part 68.

In the proposed rule, ''implementing agency'' was not defined. EPA is proposing to define implementing agency as the state or local agency that obtains delegation for an accidental release prevention program under subpart B of part 63 under section 112(l). The implementing agency could, but is not required to be the state or local air permitting authority. EPA encourages the permitting authority to assess its capabilities with respect to carrying out the duties of the implementing agency and, if appropriate, seek delegation for part 70 sources. If a state or local agency does not take delegation, EPA would assume the responsibility for implementation of section 112(r).

EPA is also proposing that implementing agencies develop their own scheme to prioritize RMP reviews, audits, and source inspections using criteria as proposed in § 68.60. EPA would not specify the number of inspections, reviews, or audits to be completed. Alternatively, EPA could require that an implementing agency review all RMPs within five years of submission, or that no less than all Tier 3 submissions be reviewed and audited within five years of submission, or that a certain percentage (for example, 1.5 percent of all plans or only those in certain tiers), be reviewed and audited within five years of submission. In addition, while paper reviews of the RMPs are important, it is critical that implementing agencies perform audits at facilities to examine and compare actual prevention practices at the source with information contained in the RMP. EPA recognizes that this effort can consume considerable resources and require particular expertise for implementing agencies. EPA plans to issue guidance for implementing agencies on review and audit criteria and to develop training for inspections, reviews, and audits. In addition, EPA would propose that implementing agencies make use of safety audits performed by sources, as required by OSHA PSM (29 CFR part 1910.119(o)) and proposed § 68.38, as part of this inspection process. The implementing agency can use this information not only to determine whether the source is making progress toward accident prevention, but also to offer assistance to sources. EPA requests comment on whether a minimum number of reviews and audits should be established and, if so, the minimum number, Tier and the basis for the minimum number and Tier, and the tools and training that should be developed to assist implementing agencies with audits at sources.

State and local involvement in the implementation of the section 112(r) requirements for all sources is critical to the success of the accident prevention program. In addition, air pollution control, worker safety, pollution prevention, and public safety goals can be achieved most effectively only through the direct involvement of state and local officials. EPA expects that SERCs, LEPCs, and other state and local emergency preparedness and response organizations will make full use of the chemical emergency prevention, preparedness, and response information in the RMP, regardless of which agency is implementing the section 112(r) requirements.

A streamlined and cohesive section 112(r) program will be best achieved if a state or local agency takes delegation to be the implementing agency for all section 112(r) sources. The use of tiered approaches to implement the 112(r) program would assist states by enabling them to focus their greatest accident prevention efforts on those sources that pose the greatest potential risk to the community. These approaches attempt to minimize the additional effort needed by states to cover all section 112(r) sources. Table 1 below shows the kinds of effort and expertise necessary for review and audit of RMPs. If a state or local organization has the resources and expertise and is willing to become an implementing agency for part 70 sources, EPA encourages it to consider becoming an implementing agency for all 112(r) sources, since the organization would have had the experience of dealing with the most complex RMPs, reviews, and audits of part 70 sources. EPA believes that divided implementation of 112(r) for part 70 sources and non-part 70 sources, between EPA and state and local agencies, could cause considerable confusion for the regulated community and lead to ineffective and uncoordinated chemical accident prevention. Implementation for all sources by one state organization could serve to bring the state and local coordination needed to achieve broad environmental, worker, and public safety goals.

TABLE 1.—COSTS TO IMPLEMENTING AGENCY

Risk management program and plan activity	National annualized implementation costs ($mm)					
	Until 1999		1999 to 2004		Yearly after 2004	
	Approach 1	Proposed rule	Approach 1	Proposed rule	Approach 1	Proposed rule
Program management	1.3	1.3	1.8	1.8	1.8	1.8
Auditor training	0.3	0.3				
Technical help for sources	0.5	0.5	0.3	0.3	0.08	0.08
Workshops/training	0.4	0.4	0.15	0.15		
RMP filing			0.06	0.06	0.05	0.05
Initial review of plan			0.5	1.1	0.5	1
Audits			0.6	1.9	0.5	1.6
Totals	2.6	2.6	3.5	5.4	2.6	4.2

[Note that the columns do not add to the total because EPA-only activities including registration and regional oversight are not included in the table. All costs are annualized and discounted at a 4 percent rate. Approach 1 refers to the Tiering section. It assumes accident history is used to segregate sources into tiers. The initial review and audits of Tier 2 sources should take 1 hour and 2 hours, respectively and that all Tier 2 manufacturers would be audited every 10 years. Non-manufacturers would be audited every 10 or 20 years. These figures are likely to be upper-bound estimates; actual costs will vary based on the degree of selective program oversight necessary and cost savings as experience is gained.]

State or local organizations that want to become an implementing agency for section 112(r) can seek delegation under section 112(l). Section 112(l) contains the processes for (1) formally transferring implementation and enforcement responsibility from EPA to a state or local agency; (2) transferring responsibility for ensuring source compliance with section 112 requirements to an agency other than the permitting authority; and (3) allowing states to implement and enforce their own toxics requirements in lieu of Federally promulgated section 112 requirements. EPA's implementing regulations for section 112(l) outline several mechanisms for approval of state and local air toxics programs and for delegation of federal authorities to state or local agencies (58 FR 62262; November 26, 1993). Permitting authorities with approved part 70 programs are well equipped to seek delegation as the implementing agency for part 70 sources, since the state's permit program contains adequate authorities, adequate resources for implementation, and an expeditious compliance schedule as required under section 112(l)(5).

Each state has the flexibility to place the program in an appropriate agency, including with the air permitting agency if it so desires. A state may want to consolidate both its occupational safety and process safety management programs in its worker safety agency. Some states may wish to have an agency that is currently a member of the SERC, but not the air permitting authority, serve as the implementing agency, provided it can meet the approval criteria of section 112(l) and coordinate its activities with other affected state/local programs. In states where the SERC itself is a state agency, the state may want the SERC to be the implementing agency. EPA is requesting that states that provide comments on this notice indicate if they plan to implement the program, and if so, whether an agency that currently is a member of the SERC, or if the SERC itself will take responsibility.

EPA recognizes that states have concerns about resources, availability of expertise, and possible liability associated with accidental release prevention. EPA plans to develop guidance and training and provide assistance to states to help build expertise and to illustrate how effective programs can be developed and implemented. EPA seeks input on the types of training and technical assistance states and local agencies will need to promote efficient and effective implementation of section 112(r) regulations for all sources. The model RMPs being developed for specific industry sectors and technical guidance to help sources comply with the accidental release prevention requirements also are designed to minimize the burden on state and local programs. EPA seeks input on the types of guidance in support of program implementation that would be most useful to states.

EPA agrees that Congress did not provide funding for implementation of non-part 70 sources. EPA is exploring the possible expansion of CAA section 105 grants to fund state programs that will cover non-part 70 112(r) sources. State and local organizations may also wish to consider opportunities for collecting fees specifically for section 112(r) activities, similar to fee-based systems used for funding EPCRA activities. Some states have established ''polluter-pays'' type fee systems that are based on multiples of the threshold quantity of extremely hazardous substances or section 112(r)(3) regulated substances handled at the source. Sources could be required to submit a fee to the implementing agency with their registration or with their RMP. EPA seeks comment on these approaches, particularly with respect to the experience of states that have tried or are developing user fee systems.

Finally, states have raised concerns about possible liability associated with the section 112(r) program. Section 112(r), unlike other CAA requirements that deal primarily with chronic hazards, involves acute hazards with the potential for catastrophic accidents resulting in immediate deaths and injuries. Generally, the liability of state and local entities for their actions in handling section 112(r) information would be controlled by state law concerning governmental immunity. As the CAA and the legislative history of section 112(r) make clear, Congress did not intend to create new liability for governmental entities when it enacted the accident prevention provisions.

Specific language in section 112(r)(1) was included to provide liability protection to governments and to avoid arguments from industry that the filing of plans with emergency planners somehow immunized a company from liability. Section 112(r)(1) states that, ''Nothing in [section 112(r)] shall be interpreted, construed, implied, or applied to create any liability or basis for compensation for bodily injury or any other injury or property damages to any person which may result from accidental release of such substances.'' The Environment and Public Works Committee inserted the above-quoted provision into the Senate's version of the CAA Amendments explicitly because of EPA's concern that the general duty clause and other portions of the accident prevention provisions would create some governmental

liability in the event of an accidental release. (S. Rep. No. 228, 101st Cong., 1st sess., at 210 (1989).) EPA expressed concern that liability in the event of an accident would shift to the government if a source identified a potential event in a hazard assessment, and the Agency failed to require the source to remove or reduce the hazard. (*Id.*) Another fear was that an owner or operator would argue that the Agency's failure to require a hazard to be addressed would be a defense for a source in a liability suit for injuries or damages caused to a third party. (*Id.*) To prevent either result, the Environment and Public Works Committee included in the precursor of section 112(r)(1) virtually identical language to that quoted above. (*Id.*)

State and local agencies are encouraged to work with their attorneys general to determine the extent of their sovereign immunity under state law. Under common law or statute, nearly all states have retained some immunity from tort suit. One common law theory of sovereign immunity that may apply in several states would be the immunity that extends to purely governmental activities, as distinguished from proprietary activities. Emergency prevention and response activities would be examples of traditional governmental activities under this theory. Another immunity theory that may apply provides immunity for discretionary activities (activities that involve judgment). Other states may have enacted specific legislation that prevents governments from being sued for activities connected to emergency response. If a state, in the judgment of its attorney general, lacks sufficient sovereign immunity to ensure state and local agencies will not be subject to liability for bodily injury or property damage in the event of an accidental release, then EPA encourages the state to enact legislation specifically providing immunity for state and local agencies carrying out functions under section 112(r). Of course, even with sovereign immunity from tort suits, EPA, states, and local entities may remain subject to FOIA suits, penalties for violation of trade secret protections under section 114(c), or mandatory duty suits (such as EPA's failure to promulgate regulations or act on listing petitions) that may allow for attorney's fees.

III. Required Analyses

A. Executive Order 12866

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

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

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

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

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

Under the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.''

EPA prepared a draft regulatory impact analysis for the proposed list rule and an addendum to the analysis for the proposed risk management program rule. EPA has prepared a revised economic impact analysis (EIA) for the risk management program rule to reflect the final list rule, the impacts of the options being considered in this notice, and comments on the draft regulatory impact analysis. The revised EIA is available in the docket.

In developing its supplemental notice, EPA considered creating three tiers for risk management program requirements described above. EPA analyzed the three options for assigning sources to the tiers, approaches 1 and 2 described in Section IIA above and the application of the proposed rule to all sources as approach 3. Total annual costs and benefits for each approach are presented in Table 2. This table does not include projected costs or benefits associated with three issues upon which EPA is taking comment in this notice: public participation, accident reporting, and inherently safer approaches because EPA's preferred approaches on these issues would impose no additional requirements on sources.

TABLE 2.—TOTAL ANNUALIZED COSTS AND BENEFITS

Approach	Number of sources	Annual cost of program	Annual benefits of programs
1	49,200 (Tier 1) 72,100 (Tier 2). 1,300 (Tier 3).	$104 million	$121.5 million.
2	49,200 (Tier 1) 57,100 (Tier 2). 16,300 (Tier 3).	$339 million	$175 million.
3	122,600 (Tier 3)	$696 million	$299 million

Based on the final list and thresholds, EPA estimates that approximately 122,600 sources would be affected by the proposed rule. The primary cost for Tier 2 was assumed to be the RMP. Tier 3 costs are strongly influenced by the tiering assumptions and by whether sources are expected to be covered by the OSHA PSM standard. The analysis assumed that a source in compliance with the OSHA PSM standard for a process would incur no additional costs to comply with many elements of EPA's prevention program. In addition, for some prevention program elements (e.g., training), some sources were assumed to be in compliance because of current activities; the only additional cost for these sources was documentation for the element. Large chemical companies and all refineries were assumed to be complying with industry standards that are the equivalent of the prevention program. These sources were assumed to bear no additional costs for some elements of the prevention program (for processes not covered by OSHA). Because EPA will require sources to submit, in the RMP, information on their hazards and steps being taken to reduce risks, EPA expects that sources and processes currently implementing PSM under OSHA or industry standards will take additional steps to ensure that their PSM programs are effective. Specifically, the EIA assumed that

sources covered by other programs would provide more program oversight, would conduct more training and refresher training, and carry out more maintenance activities; sources were also assumed to implement more capital improvements. EPA notes that because of a lack of data, the EIA made a number of assumptions on which the cost estimates are based. For example, the analysis assumed the number of listed toxic substances at large chemical companies ranged from 4 to 12; the analysis also assumed that the number of covered processes was equal to the number of substances. EPA seeks comments and any data commenters may be able to provide on whether these assumptions are reasonable.

The draft RIA prepared for the proposed list rule based its benefits calculations on the assumption that manufacturers and certain other sources would have two significant releases per year. Many commenters stated that this assumption was not justified, based on existing accident data. Consequently, the benefits analysis has been revised to reflect actual accident data and is based on EPA databases, other accident databases, and searches of newspaper reports. Based on these data, the annualized cost of all U.S. accidents involving listed toxic substances was estimated at $245 million; the annualized cost of all accidents involving listed flammables was estimated at $767 million. The costs of accidents includes deaths, injuries, evacuations, property damage, lost business, environmental damage, and litigation.

Benefits attributable to the risk management program rule are affected by two factors: The extent to which other, similar rules already provide the benefit and the expected effectiveness of these rules when fully implemented. Most of the processes covered by EPA's rule are also covered by the OSHA PSM rule. When OSHA adopted the PSM standard, it estimated, based on anecdotal evidence, that by 1997 the standard would prevent 80 percent of the accidents at OSHA-covered sources. EPA believes that the risk management program rule will increase compliance with the OSHA standard and cause many OSHA- and EPA-affected sources to achieve a higher level of safety because of the public availability of the RMP and the reviews and audits that will be conducted by implementing agencies. The RMP submission will provide implementing agency officials with a better basis for identifying and targeting problem sources; EPA expects that the RMP information will also benefit state and Federal OSHA inspectors.

Based on an industry study, the analysis estimated that the effectiveness of the EPA standard in accident reduction would be 50 percent. Accident reduction from the EPA standard applies to processes not covered by the OSHA standard and to the 20 percent of accidents not prevented by the OSHA standard. EPA estimates that the annual, quantifiable benefits of the rule will range from $121.5 million to $299 million, depending on the approach.

The quantifiable benefits are probably understated. Although the EIA assigns a value to the likelihood of a Bhopal-scale accident occurring in the U.S. in any single year, the analysis did not attempt to assign values to other catastrophic accidents that have occurred elsewhere in the world, but have not as yet occurred in the U.S. For example, the 1984 explosion at a LPG gas terminal in Mexico City killed more than 400 people offsite; an explosion in Flixborough, England, damaged more than 1,000 buildings offsite. Similar sources exist in the U.S. and have the potential to have catastrophic accidents with offsite impacts. Because of the difficulty of assigning probabilities and values to such incidents, the EIA does not include them among the quantifiable benefits, but these sources are covered by the proposed rule, and compliance with the rule will reduce the likelihood of such catastrophic accidents.

Other, intangible benefits are also attributable to the rule. For example, the definition of offsite populations, using Census data, will assist both sources and the public to identify areas where environmental justice concerns need to be addressed. The process hazard analysis is likely to identify areas where pollution prevention steps can be implemented, which may produce cost savings and reduce potential health effects offsite.

Most importantly, the information available in the RMP will have an intrinsic value to the public. EPA has not attempted to measure the value of this information, but experience with EPCRA Toxic Release Inventory (TRI) data indicates that such information creates many benefits. The simple requirement to make information public under TRI has stimulated industry to take steps to reduce emissions to avoid public concern and assure the local community that the source is a good neighbor. The public benefits from the reduced risk; the source benefits from better relations with the community. The latter can have direct, economic benefits to the source. Industry commenters on the rule noted that when the public distrusts a source, the public has resisted permit changes or zoning variances that the source needs to improve operations. Better information and the public-industry dialogue that follows can make it easier for sources to gain public support for needed changes. Government agencies and public interest groups can target their efforts at those sources that pose the greatest potential risk, rather than assuming that all sources pose a high level of risk or misdirecting their efforts toward sources that have effective safety programs.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce the effects. EPA has prepared an analysis of the effects on small entities, available as Chapter 8 of the EIA. EPA believes that the rule as proposed in 1993 would create a severe, adverse effect on small manufacturers. For the smallest chemical manufacturers, the initial costs of the initial proposed rule could equal their annual net income; for chemical companies with 20 to 99 employees, the initial cost of the proposed rule would approach their annual net incomes. The initial proposed rule imposes lower costs on non-manufacturers and, therefore, is less likely to create an adverse impact on them. The tiering approach considered in this notice would reduce the impact on small businesses significantly. Under the tiering approach, the impact on small business would be small. The tiering approach would also substantially reduce the impact on small communities.

C. Enhancing the Intergovernmental Partnership

The Clean Air Act requires EPA to develop chemical accident prevention regulations under section 112(r)(7) that include release prevention and response provisions, including RMPs. As discussed above, Congress intended the states to play a key role in implementing the rule. Both state and local agencies are mandated to receive the RMPs. This interrelationship of Federal, state, and local agencies is a continuation of the philosophy developed under EPCRA, where each level of government is seen as a stakeholder with important roles to play. To consult in a regular and meaningful way with state, local, and tribal officials in the development of the risk management program rule, EPA has met with state and local officials. Before

the proposed rule was drafted, EPA conducted focus groups with state and local officials in three states that had risk management program laws. EPA invited these states and several others to attend a two-day seminar to elicit further information. EPA has held meetings with states several times during the rule-making process, working through its Regions and through associations of state officials likely to be involved in implementing the rule. In addition, a large number of state and local agencies attended the four public hearings and submitted comments on the proposed rule. During the development of the implementation and integration provisions (§ 68.58), EPA consulted with state and local air and emergency planning agencies. EPA will seek further input from states during development of the final rule.

D. Paperwork Reduction Act

The information collection requirements in this notice have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et sec*. An Information Collection Request document has been prepared by EPA (EPA No. 1656.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting burden averaging 3 to 4 hours per response for Tier 1, 16 to 30 hours per response for Tier 2, and for Tier 3 10 to 88 hours per response for non-chemical manufacturers and 392 to 3720 hours per response for chemical manufacturers. There is no annual recordkeeping burden for Tiers 1 and 2; in Tier 3 there is an estimated annual recordkeeping burden per respondent averaging 11 hours (for the non-chemical industry) to 1000 hours (for the chemical industry). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Hazardous substances, Intergovernmental relations.

Dated: February 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the proposal published on October 20, 1993 (58 FR 54190) is amended as set forth below.

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601.

2. Section 68.3 as proposed is now amended by revising the introductory text, adding five definitions and revising one proposed definition ''Worst case release'' to read as follows:

§ 68.3 Definitions.

As used in this part, all terms not defined shall have the meaning given to them by the Clean Air Act (42 U.S.C. 7401 *et seq.*). For purposes of § 68.58 of this part, terms such as ''permitting authority,'' ''applicable requirement'' and ''source'' have the same meaning given to them in part 70 of this chapter unless otherwise defined in this section.

* * * * *

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

* * * * *

Designated agency means the state or local agency designated by the air permitting authority as the agency responsible for the review of an RMP for completeness.

Full-time employee means 2,000 hours per year of full-time equivalent employment. A source would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under section 112(l) of CAA which is subpart E of part 63. The implementing agency may, but is not required to be, the state or local air permitting agency. If a state or local agency does not take delegation, EPA will be the implementing agency for that state.

Mitigation means activities, technologies or equipment that are designed to capture or control substances after they are released to the environment or upon loss of containment. Passive mitigation means equipment, devices or technologies that function without human, mechanical or other energy input.

* * * * *

Worst case release means the release of the largest quantity of a regulated substance resulting from a vessel or process line failure.

3. Section 68.10 as proposed is revised to read as follows:

§ 68.10 Applicability.

(a) *Tier 1.* The owner or operator of a stationary source with a covered process that meets the eligibility criteria of § 68.13 shall comply with §§ 68.12—68.13 no later than [three years from the date of final rule publication].

Alternative 1 for paragraphs (b), (c) and (d):

(b) *Tier 2.* Except as provided in paragraphs (a), (c), and (d) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with 100 or more full-time employees shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] for any covered process in Standard Industrial Classification Code 2611, 2812, 2819, 2821, 2869, 2873, 2879, or 2911. For all other covered processes at the stationary source, the owner or operator shall comply with §§ 68.12 and 68.14.

(d) *Deferred Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source that has 20 or more full-time employees and a covered process in Standard Industrial Classification Code 2812, 2819, 2869, 2873, or 2911 shall:

(1) Comply with §§ 68.12 and 68.14 no later than [three years from the date of final rule publication]; and

(2) Comply with §§ 68.12 and 68.15 through 68.55 no later than [eight years from the date of final rule publication].

Alternative 2 for paragraphs (b) and (c):

(b) *Tier 2.* Except as provided in paragraphs (a) and (c) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with

a covered process shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] if the stationary source has 100 or more full-time employees.

4. Section 68.13 is proposed to be added to subpart B to read as follows:

§ 68.13 No impact sources (Tier 1).

(a) *Sources that exceed a threshold quantity only for flammable or explosive regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that is subject to this part and that does not exceed the threshold quantity for a toxic substance shall comply with paragraph (a)(2) of this section if the source has not had significant accidental release for 5 years and:

(i) For a source that exceeds the threshold for an explosive regulated substance, the source is subject to 27 CFR part 55 or 30 CFR parts 56, 57, or 77 and the distance from the process to a public or environmental impact is no closer than the distance to inhabited buildings provided in the American Table of Distances (27 CFR 55.218) for the quantity of explosives in the process; or

(ii) For a source that exceeds the threshold for a flammable regulated substance, the distance from the point of release under the worst case release scenario to a public or environmental impact is greater than the distance as calculated using the following formula for the maximum quantity present in the process:

$$\text{Distance (meters)} = 0.15 \times (0.1 \text{ x mass} \times \text{hc})^{1/3}$$

where mass is the quantity of flammable substance in kilograms, and hc is the heat of combustion in Joules per kilogram.

(2) *Program and plan requirements.* (i) The owner or operator shall place a sign at all normal access routes that warns the public and emergency responders concerning the hazard presented by the regulated substance at the site and provides an emergency contact telephone number. Such sign shall be in English and any other language commonly spoken as a primary language in the area.

(ii) The owner or operator shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(a)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of a fire or a release of the regulated substance indicated on the registration, entry within [distance for given quantity of regulated substance under American Table of Distances or paragraph (a)(1)(ii) of this section] of the source may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the contact person indicated on the registration. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

(iii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (a)(1) of this section and a copy of the risk management plan under paragraph (a)(2)(ii) of this section.

(b) *Sources that exceed a threshold quantity for toxic regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that exceeds the threshold quantity for a toxic substance shall comply with paragraph (b)(2) of this section if:

(i) The stationary source has not had a significant accidental release in the last five years,

(ii) The stationary source can demonstrate the lookup table distance for a worst-case release is less than the distance to a public or environmental receptor; and

(iii) The emergency response plan under 42 U.S.C. 11003 addresses appropriate response to an accidental release at the source.

(2) *Plan and program requirements.* (i) The owner or operator of a stationary source that meets the eligibility criteria of paragraph (b)(1) of this section shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(b)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact within _____ kilometers of the source given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of an accidental release of the regulated substance indicated on the registration, emergency response should be conducted according to the emergency response plan under 42 U.S.C. 11003, which is available at [location]. Therefore, public emergency responders should not enter this area except as provided under that plan. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

and

(ii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (b)(1) of this section and a copy of the risk management plan under paragraph (b)(2)(i) of this section.

5. Section 68.14 is proposed to be added to subpart B to read as follows:

§ 68.14 Streamlined risk management program (Tier 2).

(a) The owner or operator of a stationary source eligible for this part shall comply with § 68.15.

(b) The owner or operator of a stationary source shall establish a prevention program which includes safety precautions and maintenance, monitoring and employee training measures to be used at the source to prevent accidental releases. The prevention program shall identify other federal accident prevention requirements to which the source is subject, including national voluntary standards and measures required by 42 U.S.C. 7412(r)(1).

(c) The owner or operator of a stationary source shall prepare an emergency response program which documents specific actions to be taken in an emergency response to an accidental release, including:

(1) Procedures for informing the public and local entities about accidental releases;

(2) Procedures to be used on site to respond to an accidental release; and

(3) A description of the employee training measures used to educate employees regarding emergency situations.

(d) The owner or operator of a stationary source shall submit a risk management plan summarizing paragraphs (a) through (c) of this section to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located. The owner or operator shall retain a copy of the risk management plan for 5 years.

6. Section 68.58 is proposed to be added to subpart B to read as follows:

§ 68.58 Permit content and air permitting authority requirements.

(a) The requirements in this section apply to sources subject to both part 68 and part 70 of this Chapter. Each part 70 permit shall contain conditions requiring the following provisions, for any activity and/or emission unit subject to this part:

(1) By the deadlines set out in this part, the source shall register and submit an RMP or revised plan and shall certify upon submission that such plan is accurate and complete. Submission of the plan by deadlines required under this part shall satisfy the reporting requirements of 40 CFR 70.6(a)(3)(ii)(A).

(2) The source shall submit any additional information requested by the permitting authority or other designated state or local agency necessary to determine completeness of the RMP.

(3) The source shall annually certify compliance with, and implementation of, risk management program requirements described in this part and as described by the submitted RMP or revised plan.

(4) For part 70 permits that are issued prior to the deadline required for registering and submitting the RMP and do not contain permit conditions meeting the provisions of paragraphs (a)(1) through (3) of this section, the source no later than *[3 years from the effective date of the final rule]* shall submit an application for a permit revision consistent with § 70.7 of this chapter to establish conditions consistent with these required in paragraphs (a)(1) through (3) of this section.

(5) For part 70 permits issued on or after the deadline required for registering and submitting the RMP, the source shall register and submit any plan required by this part no later than *[3 years from the effective date of the final rule].*

(6) For new emissions units or activities at previously permitted part 70 sources which become subject to this part after *[the effective date of the final rule],* the source shall submit an application for permit revision consistent with the provisions of § 70.7 of this chapter upon startup of such units and/or activities or no later than *[3 years from the effective date of the final rule],* whichever is later.

(7) If a previously permitted part 70 source has not submitted an RMP as required, then the source shall provide:

(i) A compliance plan, including a compliance schedule for the submittal of the required plan; and

(ii) An application for a permit revision to establish permit conditions meeting paragraphs (a)(1) through (7) of this section unless such conditions are already contained within the part 70 permit.

(b) The permitting authority must, at a minimum, perform the following tasks to meet § 70.4(b)(3)(i) of this chapter with respect to part 70 sources subject to section 112(r) of CAA and this part.

(1) Verify that an RMP or a revised plan is submitted when required by this part, and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;

(2) Verify that the source has submitted an annual certification that it is properly implementing a risk management program as required by this part and as described by the applicable RMP;

(3) Take enforcement action (including penalties) on sources that fail to submit a complete plan or a revised plan, an annual certification, or accidental release report as required by this part;

(4) Incorporate and enforce permit conditions that specify a compliance schedule for submittal of a complete RMP, for permits issued prior to reporting deadlines of this part or if a part 70 source subject to this part fails to submit a complete plan as required.

[FR Doc. 95–5656 Filed 3–10–95; 8:45 am]

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federal register

Monday
March 13, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Preliminary Adjustments to Specific Tribal Trust Fund Balances; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preliminary Adjustments to Specific Tribal Trust Fund Balances

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) through reconciliation and certification of investment trust fund systems, (MoneyMax system to the Finance system), must post preliminary adjustments to certain tribal accounts. The Office of Trust Funds Management (OTFM) will convert the MoneyMax and Finance systems to a new computer system on April 1, 1995. Currently tribes obtain their statements from Finance and MoneyMax systems which are not in a balance. The conversion will use MoneyMax balances, since reconciliation and certification have confirmed that these balances are correct. The problem is, that the daily figure OTFM provides Treasury for investment in an overnight security is taken from the Finance system. This means that the figure provided to Treasury to invest is incorrect and therefore the interest earnings are also incorrect. This occurs each day the preliminary adjustments are not posted. These preliminary adjustments will either increase or decrease the following tribal fund balances: Sioux Nation, Blackfeet Tribe, Crow Tribe, Seneca-Cayuga Tribe of Oklahoma, Hoopa Yurok Settlement, Pueblo of Laguna, Southern Ute Tribe, San Luis Rey Tribe, Creek Nation of Oklahoma, Pueblo of Zuni, Choctaw Nation of Oklahoma, Three Affiliated Tribes, and the Alaskan Native Escrow Fund.

DATES: Posting to occur no later than March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Christie, Special Assistant to the Deputy Commissioner of Indian Affairs, Office of Trust Funds Management (OTFM), BIA, 505 Marquette NW., Suite 1000, Albuquerque, NM 87102–4804, phone number (505) 766–3703, facsimile number (505) 766–3774.

SUPPLEMENTARY INFORMATION: Under the Trust Fund Management Reform Act of 1994 (Pub. L. 103–412), notice is given that the Director, Office of Trust Funds Management (OTFM) must reconcile and certify tribal trust fund balances as of September 30, 1995.

The proposed preliminary adjustments are those from the MoneyMax to Finance backward reconciliation (they correct variances between the two systems as of September 30, 1992). Current reconciliation has been ongoing from October 1, 1992 to present, and adjustments are posted concurrently. It was agreed within this backward reconciliation and certification that the OTFM would not adjust balances until the affected tribes and Congress had a chance to review. Although these preliminary adjustments are a product of the backward reconciliation and have been certified, they are still pending tribal and Congressional review. The dollar affect to each tribe can be obtained by contacting Mr. Christie.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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Monday
March 13, 1995

Part V

Department of Transportation

Coast Guard

33 CFR Part 143, et al.

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 143

46 CFR Part 2

[CGD 91–030]

RIN 2115–AD78

Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for Coast Guard services related to the inspection and examination of U.S. and foreign commercial vessels. Fees in this rule are based on existing vessel inspection program requirements and services. The fees are established for the purpose of recovering costs associated with providing Coast Guard vessel inspection services.

EFFECTIVE DATE: This rule is effective on May 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

For inquiries and payment information during initial implementation of the rule, call, toll-free, 1–800–941–3337.

FOR FURTHER INFORMATION CONTACT: Denise J. Mursch, Planning Staff (G-MP–2), Office of Marine Safety, Security and Environmental Protection, (202) 267–0785.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR John J. Kelly, Project Manager, and LCDR J.K. Gillespie, Office of Marine Safety, Security and Environmental Protection, and C.G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 18, 1991, the Coast Guard published in the **Federal Register** (56 FR 65786) a notice of proposed rulemaking (NPRM) entitled ''Direct User Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.'' On December 24, 1991, the Coast Guard published a correction to the proposed rule (56 FR 66766). This correction added Appendix A, a summary of the preliminary Regulatory Evaluation, to the NPRM published on December 18, 1991. The initial public comment period closed on February 18, 1992.

The Coast Guard received numerous comments requesting that public hearings be held in connection with the vessel inspection user fee rulemaking. The Coast Guard determined that public hearings would significantly contribute to this rulemaking, and published a Notice in the **Federal Register** on March 24, 1992 (57 FR 10149) to reopen the public comment period and announce the scheduling of nine public hearings. The nine public hearings were held between April 13, 1992, and May 1, 1992, at the following locations: Baltimore, MD; Secaucus, NJ; Boston, MA; Miami, FL; New Orleans, LA; Chicago, IL; Seattle, WA; San Francisco, CA; and San Diego, CA. The public comment period closed on May 18, 1992.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 and removed long-standing prohibitions against imposing certain user fees.

As amended by the Act, 46 U.S.C. 2110 now requires the establishment and collection of user fees for Coast Guard services provided under Subtitle II of Title 46, United States Code. The Coast Guard is developing Subtitle II user fees in several separate rulemakings, each of which covers services provided in an identifiable program area. On March 19, 1993 (58 FR 15228), the Coast Guard published the final rule on User Fees for Marine Licensing, Certification of Registry, and Merchant Mariner Documentation (CGD 91–002). On November 15, 1993 (58 FR 60256), the Coast Guard published the final rule on User Fees for Documentation of Vessels and Recording of Instruments (CGD 89–007). In addition to the fees for inspection or examination of U.S. and foreign commercial vessels in this rule, the Coast Guard also plans to establish fees for services related to Coast Guard equipment approval and factory inspections (CGD 92–013); inspections for the initial Certificate of Inspection (COI), such as new vessel construction inspections, inspections of existing vessels undergoing rebuilding, reflagging, or major conversion; and for commercial vessel plan review.

Overview of the Rulemaking

This rule revises 46 CFR Part 2 and creates user fees for Coast Guard inspections or examinations of existing U.S. and foreign commercial vessels as follows:

For U.S. Vessels

(1) An annual vessel inspection fee which covers all periodic inspections and follow-on inspections conducted during the course of a given year for commercial vessels required to have a Coast Guard COI.

(2) An overseas inspection fee for inspections conducted outside the United States and its territories, except for inspections conducted in Canada, Mexico, and the British Virgin Islands.

For Foreign Vessels

(1) A fee for the biannual Letter of Compliance (LOC) examination and for the annual reexamination of tankships carrying hazardous liquids or liquefied gases in bulk in U.S. waters;

(2) A fee for the annual examination of tankships carrying oil in bulk in U.S. waters;

(3) A fee for the LOC examination of mobile offshore drilling units (MODUs) operating on the U.S. outer continental shelf;

(4) An annual vessel inspection fee for all vessels required to have a Coast Guard COI, including Canadian tank barges and vessels of nations not signatory to the International Convention for Safety of Life at Sea (SOLAS).

(5) An overseas examination fee for examinations conducted outside the United States and its territories, except for examinations conducted in Canada, Mexico, and the British Virgin Islands.

Vessels Not Covered

This rule does not apply to foreign passenger vessels, to training vessels operated by State maritime academies, or to public vessels of the United States which are excluded from the provisions of subtitle II of Title 46 U.S. Code.

Waivers

Collection of vessel inspection fees is waived for all vessels whose fees would be paid directly using Federal appropriated funds.

Exemptions

No exemptions were proposed in the NPRM; however, the final rule contains one exemption for charitable, not-for-profit, youth-oriented organizations which use their vessel(s) exclusively for training youths in boating, seamanship, and navigation skills. This exemption is

discussed more fully in the section of this document entitled *Exemptions*.

Fee Limit for Tank Barges

Annual vessel inspection fees calculated for tank barges in various service and route categories all exceeded $500. However, the Act provides that a user fee for inspection or examination of a non-self-propelled tank barge may not exceed $500 per year. Thus, the Coast Guard set the annual vessel inspection fee for tank barges at the statutory limit of $500.

Types of Inspections Covered under this Rule

Fees established by this rule are based on Coast Guard costs of providing inspection and examination services. These costs include marine inspector hours, travel time, mileage costs, administrative support costs, training costs, and overhead costs. In establishing these fees, the Coast Guard reviewed all inspection requirements contained in 46 CFR part 2, as well as the technical requirements for inspections found in 46 CFR parts 31, 71, 91, 105, 107, 108, 109, 151, 167, 175, 176, 189, and 190 and in 33 CFR parts 140, 143, 151, 155, and 157.

Depending on vessel type, commercial vessels are subject to periodic inspections at quarterly, 1 year, 1.5 year, 2 year, 2.5 year, 3 year, 5 year or 10 year inspection intervals. Typically, Coast Guard marine inspectors visit each U.S. commercial vessel a minimum of once each year to either: Inspect the vessel for reissuance of the COI; to conduct the annual reinspection; or to inspect the vessel's hull. The amount of time it takes to conduct any given inspection is often a function of the type of inspection being conducted, the specific category of vessel being inspected, the length and in some cases the tonnage of the vessel being inspected, and the maximum number of passengers the vessel is authorized to carry under the vessel's COI. These three periodic inspections, namely the inspection for certification, the reinspection (or mid-period inspection), and the hull (or drydock) inspection, generally require the same amount of inspection time for the majority of vessels in each vessel category.

Follow-on inspections ensure that a vessel remains in compliance with its COI. The purpose of follow-on inspections varies from one vessel to the next. However, these inspections typically include, but are not limited to, any of the following four activities:

(a) Certifying that deficiencies noted during a previous inspection have been satisfactorily corrected;

(b) Surveying either damaged ship structures or propulsion systems, or lifesaving, navigation, or firefighting equipment which has failed;

(c) Inspecting, testing, or approving repairs either to damaged ship structures or propulsion systems, or to lifesaving, navigation, or firefighting equipment which has failed; or

(d) Verifying that vessel modifications or alterations meet regulatory requirements.

Wide variations exist relative to the amount of time required to conduct follow-on inspections, which include, but are not limited to: Drydock extension inspections; MARPOL compliance inspections; inspections to clear outstanding requirements issued by a Coast Guard marine inspector on Coast Guard Form CG–835; damage surveys; repair inspections; permit to proceed inspections; and non-credit drydock inspections. These variations are attributable to many factors, including: The degree to which the vessel is made ready for inspection by the owner or operator; the knowledge, training, and experience of shipyard personnel and the ship's crew; the knowledge and training of the marine inspector; the vessel owner's or operator's management and operating procedures; the level of coordination with third party contractors; the nature and extent of the repairs required; and the size and extent of any deficiency list to be inspected or cleared. Generally, there are no accurate predictors as to the amount of time each type of follow-on inspection should take.

Inspection and Examination Fees

For the purposes of this rule, vessels required to have a COI are inspected, and foreign vessels not required to have a COI are examined. Annual vessel inspection fees are payable each year on or before the vessel's user fee anniversary date and entitle a vessel owner or operator to all periodic and follow-on inspection services needed during the year. All other inspection or examination-related fees are payable by the vessel's owner or operator prior to the time that the Service is provided.

Vessels of nations which are party to SOLAS are examined by the Coast Guard only to the extent necessary to verify compliance with their own nation's inspection laws, the requirements of various international treaties, and any additional domestic regulations which may be imposed by the United States. This rule does not establish fees for SOLAS compliance examinations.

Derivation of the Annual Vessel Inspection Fee

Depending on the specific vessel category, COIs are issued for a period of one, two, or three years. Reinspections are conducted during the intervening years, on or about the anniversary date of the vessel's COI. Hull inspection intervals vary from once every twelve months to once every ten years, depending on the vessel category and whether the vessel operates in salt water or fresh water. Follow-on inspections, on the other hand, can occur at any time.

The length of the period for which a COI is issued is only one factor in the annual vessel inspection fee calculation. Using vessel inspection data, the Coast Guard determined the average amount of time needed to conduct periodic and follow-on inspections for vessels in each vessel category during a twelve month period. For Coast Guard data capture purposes, hull inspections also included internal structural inspections, fuel oil tank inspections, and tailshaft inspections, since these inspections most often coincide or are associated with the hull inspection.

The annual vessel inspection fee is based upon an equation which calculates the average expected value (in terms of annual inspector hours) of inspection services provided to each vessel category during any given year. The average expected value is the average number of hours it takes to conduct a type of inspection multiplied by the probability of that inspection taking place during any given year. It assumes that the average time to conduct an inspection is representative for all vessels within a given vessel category; that the distribution of the average inspection time about the mean is normal; and that the average inspection time has a relatively small standard deviation. However, while use of the average expected value worked well for periodic inspections, it did not work as well for follow-on inspections, because the standard deviation for many follow-on inspections was several times the mean.

Constructing annual vessel inspection fees predicated on full recovery of follow-on inspection costs would have resulted in shipowners who require less inspection services subsidizing shipowners who require significantly greater inspection services. For this reason, the Coast Guard proposed to base charges for follow-on inspections at 50% of cost. Charging only 50% of the cost associated with conducting follow-

on inspections minimized the impact of the large standard deviations and reduced the potential for inequities within vessel categories and subcategories. No comments on the NPRM suggested that there was any disagreement with the proposal. The annual vessel inspection fees in this final rule are thus based on the total cost of conducting periodic inspections and half of the costs of conducting follow-on inspections.

The Coast Guard developed its vessel inspection and examination fees using information from a workload analysis study, vessel inspection data contained in the Coast Guard's Marine Safety Information System (MSIS), and costs associated with conducting vessel inspection and examination activities by personnel assigned to Coast Guard Marine Safety Offices and Coast Guard Marine Inspection Offices.

Vessel inspection and examination fees were developed to generate receipts approximating the total vessel inspection program costs of providing those services. Vessel inspection program costs include the cost of personnel, local travel costs for inspectors, a portion of the annual cost of operating MSIS, and the associated overhead required to provide Coast Guard inspection and examination services (i.e., office space; office equipment and supplies such as telephones, computers and copiers; special training; and other personnel-related costs). Using information derived from a workload analysis study, the hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11), the Coast Guard calculated the total cost of the vessel inspection program to be approximately $28.7 million. Of this amount, an estimated $2.9 million will be the subject of a separate rule covering fees for inspections associated with new vessel construction and for commercial vessel plan review services.

Based on the workload analysis study and the total vessel inspection program cost, the Coast Guard calculated a basic hourly rate for vessel inspection services of $87 per qualified inspector hour. A detailed discussion of the calculation of this figure is set out in the Regulatory Evaluation.

Each fee was calculated based upon the time the Coast Guard would reasonably expect to spend inspecting or examining vessels in specific categories during an average year, including travel time to and from the inspection site. All fees were rounded down to the nearest $5.00 increment. The costs associated with inspecting the different types of MODUs were determined using Coast Guard historical information, because workload data was not captured based on the type of drilling unit.

Consistent with guidance provided by the Office of Management and Budget (OMB) Circular A–25, and except where otherwise mandated by statute, the Coast Guard's goal in establishing user fees for Subtitle II services is full cost recovery. This rule will recover an estimated $17.2 million of the $25.8 million annual cost of providing Coast Guard vessel inspection and examination services. An estimated $8.6 million in costs will not be recovered by user fees due to statutory prohibitions or limitations; lack of statutory authority; exemptions in the rule from payment of fees; and administrative reductions during development of the final fee schedule. These unrecovered costs are listed in Appendix E of the Regulatory Evaluation for this rule.

OMB Circular No. A–25 requires that all user fees be reviewed periodically to determine if adjustments or changes to the fees are necessary. The fees in this rule will be revised if costs change due to inflation or deflation; if the Coast Guard changes the manner in which inspection or examination services are provided; or if otherwise deemed appropriate. Revisions to the fees would be done through rulemaking.

Optional Prepayment of Annual Vessel Inspection Fee

The final rule allows a vessel owner or operator to prepay the annual vessel inspection fee for any period of not less than three years and not more than the design life or expected remaining service life of the vessel. The Coast Guard will calculate the prepayment amount using the net present value of each annual payment during the requested prepayment period. The net present value is a discounted amount which, if deposited in an interest bearing account until the payment year and when added to the accumulated interest, would equal the payment amount due. The interest rate used in calculating net present value will be the 10-year Treasury note rate in effect at the time of calculation, as adjusted for inflation using the projected rate for Federal pay increases. Entitlement to inspection services during the prepayment period is transferable to a subsequent owner of the vessel, but the entitlement is not transferable to a different vessel. If a vessel certificated for a single service changes service during the prepayment period, the fee for the remainder of the prepayment period must be recalculated using the vessel's new category. The remaining prepaid balance will be applied to the fee calculated for the remaining years in the vessel's new category, commencing with the next user fee anniversary date. With the exception of a vessel that is removed from Coast Guard certification, as discussed in § 2.10–105(e), prepayments of fees are non-refundable.

Overseas Inspection and Examination Fees

Approximately 40,000 inspector hours are expended annually in the overseas inspection of U.S. commercial vessels. These overseas inspections are conducted at the request of the vessel owner. Vessel owners and operators reimburse the Coast Guard (under 46 U.S.C. 3317) for travel and per diem expenses of the marine inspectors, but not for the personnel costs associated with conducting overseas inspections. Personnel hours expended during travel to the overseas inspection site and at the overseas inspection site waiting for a vessel to be made ready for inspection constitute the extra costs associated with providing inspection and examination services at overseas locations which are not included in the annual vessel inspection fees.

The Coast Guard proposed an additional flat fee for each overseas inspection. The total marine inspector hours expended in conducting overseas inspections divided by the number of overseas inspections conducted provides an average time for each inspection of approximately 53 hours travel and delay time. At $87 per qualified inspector hour, this rule sets the fee for each overseas inspection at $4,585.

Foreign Tankship Fees

Foreign tankships which carry hazardous liquids or liquefied gases in bulk are issued a LOC, which is valid for two years. These tankships are also examined annually, at which time the vessel's LOC is endorsed. Foreign tankships carrying oil in bulk, on the other hand, are issued a Tank Vessel Examination (TVE) Letter, which is valid for one year. The time involved to conduct each of these tankship examinations is essentially the same. The fee for each of the three examinations, therefore, is the same amount, namely $1,100.

Foreign MODU Fees

Foreign MODUs are examined under the authority of the Outer Continental Shelf Lands Act, codified in 43 U.S.C. 1356. The regulation requiring a foreign MODU to obtain a LOC is published in

33 CFR 143.210. LOCs for foreign MODUs are valid for one year or until the MODU departs the outer continental shelf, whichever occurs first. Since certain other foreign vessels are required to pay user fees for inspections and examinations, and since U.S. MODUs are generally inspected by and pay fees to foreign agencies when operating in foreign waters, the Coast Guard has established user fees for examination services provided to foreign MODUs. Foreign MODU fees are collected under the authority of 14 U.S.C. 664 and 31 U.S.C. 9701.

Foreign MODU examinations are conducted under 33 CFR 143.207 and 143.210 to ensure compliance with one of the following: (a) The design and equipment standards for MODU's in 46 CFR part 108; (b) the design and equipment standards of the documenting nation, if those regulations have been found to meet or exceed U.S. standards; or, (c) the standards issued by the International Maritime Organization.

Since examinations conducted to ensure compliance with (a) above involve essentially the same inspection services provided to U.S. MODUs, the fees for these foreign MODU examinations are identical to the annual vessel inspection fees for U.S. MODUs. Likewise, since the scope of the examinations conducted to ensure compliance with categories (b) and (c) above are essentially the same, and involve the same amount of time, the fee for each of these foreign MODU examinations is the same amount, namely $1,830.

Foreign Passenger Vessel Fees

The Coast Guard examines foreign passenger vessels of nations that are party to SOLAS to verify that these vessels are in substantial compliance with the laws of their flag state and the controls imposed by appropriate international treaties. The Coast Guard initially proposed to charge the same fee for each initial, annual, and quarterly foreign passenger vessel examination. However based on further review and research, the Coast Guard has subsequently determined that the reciprocity provision contained in 46 U.S.C. 3303(b) does not allow imposition of a fee for the examination of a foreign passenger vessel except to the extent that a foreign country charges vessels of the United States trading to the ports of that country. Since there are no U.S. passenger vessels being charged examination fees by a foreign country, and no clear indication that any such fees would be charged, the Coast Guard has not established a fee for the examination of foreign passenger vessels under 46 U.S.C. 3303.

Fee Collections

The Coast Guard has established a vessel user fee anniversary date for each existing vessel currently inspected by the Coast Guard. This was accomplished by checking MSIS data for the COI anniversary date of all Coast Guard inspected vessels and assigning the vessel's user fee anniversary date as the first day of the next month after the COI anniversary date, exclusive of the year. Once established, the vessel user fee anniversary date remains the same for the service life of the vessel. Annual vessel inspection fees are due on or before the vessel's user fee anniversary date. Coast Guard inspection services will not be provided until the annual vessel inspection fee for that year has been paid in full. For new vessels entering service after the effective date of this rule, the vessel user fee anniversary date will be based upon the vessel's initial COI issuance date. This same method will be used for existing vessels coming under Coast Guard certification for the first time.

Annual vessel inspection fees and foreign vessel examination fees must be mailed to the address specified in 46 CFR 2.10–20. Overseas inspection and examination fees, on the other hand, must accompany each request for an overseas inspection or examination as required by § 2.10–120.

Fees generated by this rulemaking will be deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities. This means that the fees will not be added to current Coast Guard appropriations; nor will the fees directly affect future appropriations used for administration of the Coast Guard's marine safety programs. The Coast Guard considers this to be an advantage, since funding for these programs is more predictable when based on firm appropriations, and administration of the vessel inspection program will not be dependent on the amount of fees collected during any given year.

Discussion of the Comments

Overview

During the comment period, the Coast Guard received a total of 1,092 written comments to the docket. In addition, 176 persons either testified or submitted written statements during the nine public hearings.

All segments of the industry generally objected to the proposed imposition of any user fees for the inspections of their vessels. They also objected to the proposed fee amounts being too high. Many requested an after-the-fact billing system to charge for the actual inspection time rather than the proposed annual fees.

The largest number of comments came from owners and operators of small passenger vessels who were primarily concerned with the cumulative economic impact of local, State, and Federal fees and the effect of the fees on their income.

Numerous comments were also received from the freight barge industry. The industry's primary concerns were that they were not included in the fee cap for tank barges and that they would be charged twice for what appears to be identical services conducted by the Coast Guard and American Bureau of Shipping (ABS).

The oceangoing merchant fleet industry was primarily concerned that the proposed fees would place their vessels at a competitive disadvantage relative to their foreign counterparts; that foreign countries may choose to reciprocate and charge U.S. vessels fees for operating in their ports; that the Coast Guard should delegate more of its inspection responsibilities to ABS; that charging an hourly rate would provide an incentive for owners to have their vessels ready for inspection; and that if the industry must pay for vessel inspection services, the Coast Guard needs to improve its efficiency and the quality of its inspection corps.

The offshore oil industry also submitted numerous comments. The primary concerns of this industry segment related to the economic impact the fees would have on individual vessel operators supporting their industry, i.e. offshore supply vessels (OSVs).

Some comments requested that more information be provided which specifically shows how the annual inspection fees were derived. The Coast Guard has included a detailed example of an annual fee calculation in the final Regulatory Evaluation for this rule.

Exemptions

Under 46 U.S.C. 2110(g), the Coast Guard may exempt a person from paying fees if it is determined to be in the public interest to do so. In the NPRM the Coast Guard did not propose any exemptions, but invited comments on exemptions that could be considered to be in the public interest. Over 40 exemption requests were received, spanning a wide range of vessel categories. The categories for which exemptions were requested included: State, local, and private ferries; vessels

operated by youth-oriented, not for profit, charitable or educational organizations; vessels operated by nonprofit organizations or foundations; oceangoing merchant vessels; small passenger vessels less than 30 feet in length; certain historic vessels; small entities; small passenger vessels; U.S. vessels engaged in foreign commerce; small passenger vessels built before December 31, 1990; vessels whose gross profit was less than 20% of the proposed annual vessel inspection fee; companies engaged in providing passenger transportation services; auxiliary sailing vessels; sailing school vessels less than or equal to 65 feet in length; yacht club launches carrying 12 passengers or less; any small entity negatively impacted by the fees; tourism vessels; U.S. flag liner vessels; small passenger vessels less than 100 gross tons; small passenger vessels less than 100 gross tons and engaged in recreational diving and fishing activities; foreign vessels; and U.S. vessels in general. Of this list, the greatest number of comments came from the Boy Scouts of America (BSA); state, local, and private ferries; and various not for profit organizations. Comments from these groups presented a variety of reasons to support their requests for exemption.

Most other requests for exemptions simply suggested an exemption category but failed to provide an articulated rationale in support of their request.

Several comments requested an exemption for ferries which are owned and operated by local, state, or private entities and which support local transportation systems. The comments indicated that ferries reduced vehicle traffic congestion on area roads and provided access to remote sites, such as to a barrier island State park, or to the islands of Martha's Vineyard and Nantucket. The comments also indicated that many ferries operate on a nonprofit basis in an effort to keep their fares as low as possible, with fare increases often regulated by a State Public Utilities Commission. One State transportation department indicated that it received some type of subsidy from the Federal Transit Administration (FTA) and stated that it is not logical for the Federal Government to subsidize water-based nonprofit operations on the one hand, while imposing a fee for Coast Guard inspection services on the other hand.

A substantial number of comments requested exemptions for vessels owned or operated by organizations that are charitable, not for profit, and youth-oriented, such as the BSA, including the Sea Scouts and Sea Explorers, Girl Scouts of the United States of America (GSA), and the Young Men's Christian Association (YMCA) of the United States of America. These organizations are involved in teaching youths maritime skills, such as boating, seamanship, and navigational skills. These organizations argued that since many of their programs rely solely on volunteers, fund-raising activities, and private donations for their total funding and support, their ability to continue offering these programs would be adversely affected if fees were charged for the inspection of their vessels.

In addition to organizations discussed above, several other nonprofit organizations requested exemptions for their vessels. These organizations provide the public with educational programs having an environmental or historical focus, rather than teaching youths maritime skills. One organization provides charitable medical care and therefore has a humanitarian focus.

The Coast Guard acknowledges that there are many charitable organizations which provide services to the public, and that even commercial operations, such as ferries, benefit the general public. However, the Coast Guard does not agree that all organizations which serve or benefit the public in some manner should be exempted from the vessel inspection fees.

The Coast Guard has a long-standing record of supporting national youth programs (Coast Guard Public Affairs Manual—COMDTINST M5728.2B). Charging fees for inspecting these vessels would not be in keeping with this long-standing support, nor would it be consistent with other Coast Guard user fee rulemakings such as the recreational vessel user fee and merchant marine licensing user fees which have established a similar exemption. Therefore, consistent with past practice, the Coast Guard has decided to exempt vessels which are owned or operated by not for profit, charitable, youth-oriented organizations and which are used exclusively by those organizations for training youths in boating, seamanship, and navigation skills.

A vessel meeting the criteria set out in the final rule may be eligible for an exemption. Vessel owners and operators, including the BSA, GSA, and YMCA organizations, desiring an exemption must submit a written request to Commandant (G-MP) via the Officer in Charge, Marine Inspection (OCMI) of the Marine Inspection Zone in which the vessel normally operates. Since some of the vessels owned or operated by the BSA, GSA, and YMCA organizations may not be used exclusively by those organizations for training youths in boating, seamanship, and navigation skills, it is expected that some of these vessels may not be eligible for this exemption.

Historic Vessels

Several comments to the docket asserted that the proposed annual vessel inspection fees will have an adverse impact on vessels listed on the National Register of Historic Places and other vessels possessing either historical character or historical significance. Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their actions on historic properties and to seek comments from an independent reviewing agency, the Advisory Council on Historic Preservation (ACHP). The purpose of the Section 106 process is to prevent unnecessary harm to historic properties arising from Federal actions. Regulations for the Section 106 process are contained in 36 CFR part 800.

Because a number of inspected vessels are listed on the National Register of Historic Places, the Coast Guard referred this matter to the Advisory Council on Historic Preservation. In November 1993, the Advisory Council determined that this rule does not constitute an undertaking under Section 106 of the National Historic Preservation Act, therefore the Coast Guard did not do a Section 106 analysis.

Specific Comments

Several comments expressed the opinion that their taxes had already paid for the cost of providing Coast Guard inspection services, and that charging fees amounted to nothing more than ''double taxation.'' Some comments stated that the primary beneficiaries of Coast Guard inspection services include the public, the ship's crew and its passengers, and the environment, and that fees should be reduced substantially in recognition of that fact.

The Coast Guard does not agree. The Omnibus Budget Reconciliation Act of 1990 tasked the Coast Guard with establishing user fees for services provided under Subtitle II of Title 46, United States Code. This congressional mandate was aimed at recovering costs associated with providing Coast Guard services from the recipients of those services. OMB Circular No. A–25, dated July 15, 1993, states that when a service or privilege provides special benefits to an identifiable recipient beyond those that accrue to the general public, a

charge will be imposed to recover the full cost to the Federal Government for providing the special benefit, or the market price. The Circular also provides that when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.

Just as a business cannot operate legally without applicable State and city business licenses, a U.S. commercial vessel of a certain size or tonnage cannot legally carry passengers or cargo in U.S. waters unless it has a valid COI issued by the Coast Guard. The Coast Guard's position is that the vessel owner or operator is the primary beneficiary of Coast Guard inspection services.

A few comments asserted that there were no cost controls inherent in the proposed fees that would help ensure that the fees were competitive, reasonable, and cost effective. Still others questioned having 416 FTE (full time equivalents or man-years, as opposed to actual personnel) associated with the total vessel inspection program cost, because only about half of the FTE could be accounted for by the MSIS inspection workload data.

Personnel such as the Chief of the Inspection Department, the Assistant Chief of the Inspection Department, marine inspector trainees, clerical and support personnel, and to a lesser extent the Executive Officer and the Commanding Officer at each of the Marine Safety Offices, all contribute to the 416 FTE associated with the administration of the Coast Guard's vessel inspection program. However, the hours for these support personnel are not in the MSIS inspection workload data which tracks mainly those who are directly involved in doing the inspection or processing the reports. The support and administrative costs not tracked in MSIS are nonetheless necessary to the vessel inspection program, as are the marine inspectors actually conducting the onboard inspections.

Others asserted that the Coast Guard intended to charge a separate fee for reinspections and follow-on inspections.

All reinspections, hull inspections, and follow-on inspections are encompassed within the annual vessel inspection fee. With the exception of the overseas inspection fee, the annual vessel inspection fee represents the only inspection fee most U.S. vessel owners will pay during any given year. Payment of the annual vessel inspection fee entitles each owner or operator to a full year of periodic and follow-on inspections, regardless of when the COI, or any other inspection, is conducted.

Some comments stated that the Coast Guard's de facto COI issuance policy is shortening the inspection cycle, causing inspections to occur more frequently than statutorily required. They indicated the current Coast Guard practice of listing the COI issuance date as the date that the inspection was conducted (versus the actual expiration date of the COI) would cause owners to pay an annual vessel inspection fee while receiving less than 12 months of Coast Guard inspection services.

The annual vessel inspection fee will be due on the same date each year, namely the user fee anniversary date, for as long as the vessel remains in service. Therefore, the COI issuance date will have no bearing on the amount of annual vessel inspection services provided.

A few comments suggested that inspectors may become even more vigilant during future inspections so as to find discrepancies and thereby generate additional user fee receipts for the U.S. Treasury.

Since the annual vessel inspection fee includes all periodic and follow-on inspections conducted during the course of the year, there exists no incentive for inspectors to uncover additional discrepancies to increase fee collections.

A number of comments took exception to the Coast Guard's use of the term ''privilege of inspection'' in the NPRM and suggested that since inspections are required by Coast Guard regulations a more appropriate phrase would be either ''right to be inspected,'' ''eligibility for inspection,'' or ''entitlement to inspection.'' The Coast Guard agrees, and the phrase ''privilege of inspection'' has been replaced by language more correctly indicating that payment of the annual vessel inspection fee entitles a vessel owner or operator to a full year of periodic and follow-on inspection services.

Numerous comments suggested that the proposed $500 cap on tank barge inspection fees was discriminatory and inequitable, especially when compared to the fees proposed for small passenger vessels and the fees proposed for freight barges.

The tank barge cap was part of the Act passed by Congress. The calculated fees for tank barges ranged from an annual fee of $778 to $1,015. Because the fees as calculated exceeded the statutory limit of $500, and the Act prohibits charging a fee exceeding $500 per year for these vessels, the Coast Guard set the annual vessel inspection fee at the maximum amount allowed by Congress.

Some comments expressed the opinion that in response to the fees established for foreign vessels under this rule, countries may elect, in turn, to charge fees for U.S. vessels operating in foreign ports.

The Coast Guard acknowledges the possibility that foreign countries may consider charging reciprocal fees. However, the Act requires that fees be established for services provided under Subtitle II of Title 46 United States Code, except as otherwise provided in Title 46 and to the extent that the fees are not in conflict with the international obligations of the United States. The Coast Guard has determined that user fees are enforceable for TVE and LOC examinations conducted on foreign tankships and MODUs. These examinations are required by 46 U.S.C. Chapter 37 and are not based solely on any international convention or agreement; rather, they are based on U.S. domestic port entry requirements aimed at ensuring the protection of U.S. ports, its waterways, and the environment.

Several comments suggested that annual vessel inspection fees will place U.S. vessels at a competitive disadvantage relative to foreign vessels engaging in U.S. or international commerce. One commercial shipping representative commented that his company was attempting to compete in an international market, where his competitor's costs associated with regulatory bodies are limited to those of a classification society. He objected to having to pay Coast Guard vessel inspection fees in addition to classification fees stating that the increased fee burden placed his company at a competitive disadvantage.

Just as the Coast Guard inspects the U.S. commercial vessel fleet, SOLAS signatory nations inspect vessels belonging to their commercial vessel fleets. Most of these nations charge their fleets fees for providing these inspection services. Since these vessels have been inspected by their ''flag state,'' and have been issued appropriate international convention certificates prior to entering U.S. waters, Coast Guard examinations are limited to ensuring compliance only with U.S. regulations which may supersede international requirements. These LOC and TVE examinations take less time to conduct than an inspection for a COI. Thus, these examinations

have lower fees. Vessels of foreign nations not party to SOLAS, and vessels to which SOLAS does not apply are subject to the same inspection requirements as U.S. vessels. Because these latter vessels require the same amount of Coast Guard inspection services as their U.S. counterparts, they must pay a vessel inspection fee equal to the annual vessel inspection fee paid by U.S. vessels of the same vessel service category. Thus, foreign vessels using U.S. ports pay the equivalent amounts for Coast Guard inspection services as U.S. vessels.

One comment suggested that the proposed vessel examination fee schedule should be expanded to include inspections of foreign cargo vessels of nations that are signatory to SOLAS.

As authorized by 46 U.S.C. 3303 and required under 46 CFR 90.05–1, foreign vessels of a country having inspection laws and standards similar to those of the United States, and which have an unexpired COI issued by proper authority of its respective country, receive only a port state control examination to ensure that the condition of the vessel is as stated on its COI. User fees solely for port state control examinations would be inconsistent with the operation of customary international practice and they are not included in this rule.

A few comments stated that every vessel carrying passengers for hire should be inspected by the Coast Guard. Others stated that the law concerning bareboat charters should be changed.

These suggestions would require changes to inspection statutes and regulations which are beyond the scope of this rulemaking. However, should additional categories of commercial vessels become subject to Coast Guard inspection in the future, user fees will be established for these vessels as well. For example, the Passenger Vessel Safety Act of 1993 now requires that certain additional vessels carrying passengers for hire be inspected by the Coast Guard. Therefore, the fees established in this rule also apply to these vessels.

A few comments expressed the concern that fees charged for vessel inspection services were, in reality, paying for other Coast Guard services provided to recreational and fishing vessels for which user fees have not been proposed. The Coast Guard disagrees.

This rule establishes annual vessel inspection fees for those vessels subject to Coast Guard inspection under 46 U.S.C. 3301. Recreational vessels and fishing vessels are not currently required to be inspected.

One comment suggested that the proposed annual vessel inspection fee for liquefied natural gas tankships (LNG) was not based on the actual time spent inspecting such vessels. The comment stated that the proposed fee for LNG tankships was 244% higher than the proposed fee for a non-LNG tankship, despite the fact that both tankship categories should take essentially the same amount of time to inspect.

The Coast Guard agrees that if vessel size was the only factor, LNG tankships should take essentially the same amount of time to conduct the required inspections as non-LNG tankships. However, Coast Guard-inspected LNG vessels operate almost exclusively in the overseas trade. MSIS data indicates that most reinspections of LNG tankships occur while the vessel is underway, and most drydockings often require the services of a dedicated inspector for extended periods. The annual vessel inspection fee for LNG tankships also includes Coast Guard costs associated with conducting the annual testing of firefighting systems. All of these factors increase the average annual inspection time.

Because there are only 10 active vessels in the LNG tankship fleet, the Coast Guard reviewed MSIS data on each of the 10 vessels dating back to 1987 to establish a more reliable average inspection time. Data which clearly exceeded the mean inspection time was intentionally eliminated from this analysis. The results indicated that a reduction in the proposed annual vessel inspection fee for LNG tankships was, in fact, justified. However, the recalculated annual vessel inspection fee for LNG tankships remains almost twice as high as the annual vessel inspection fee for a conventional tankship.

One comment asked whether a separate fee would be assessed to a vessel operating part of the year in one region of the country and operating the rest of the year in another region of the country.

Only one annual vessel inspection fee will be charged per vessel, regardless of the number of regions in which a vessel operates during any given year. Payment of the annual vessel inspection fee entitles a vessel owner to a full year of periodic and follow-on inspections, regardless of where in the country the vessel chooses to operate and how often the vessel is inspected.

Several comments suggested that the Coast Guard should consider billing at the conclusion of the inspection. Other comments expressed the opinion that fixed annual fees do not provide an incentive for owners to have their vessels ''ready for inspection.'' These comments argued that paying an annual fee, in effect, rewards those owners and operators who are not prepared for the inspection at the expense of those who are prepared. One commenter said he objected to having his annual fee become higher because of another company which makes no attempt to maintain its vessels or prepare adequately for an inspection. He suggested the Coast Guard establish a published guideline of thresholds. When the number of visits exceeds that threshold, the annual fee for that vessel should increase on its next anniversary, and hopefully other more cooperative and prepared companies' fees should decline. Generally, these comments stated that charging for each inspection at a fair, hourly rate would not only be more equitable, but would also ensure that the fees reflected the actual amount of time spent on board the vessel.

Hourly fees would more accurately reflect the actual time an inspector spends on board a vessel and would also likely result in lower fees for those owners whose vessels were ''ready for inspection'' compared to owners whose vessels were ''not ready for inspection.'' However, the average expected value of services provided each year is representative of the majority of vessels in each vessel category. In addition to the average annual amount of time spent on board each vessel, annual vessel inspection fees also include travel and administrative (paperwork, review, and research) time.

Billing at the conclusion of each inspection poses essentially the same problems as charging at an hourly rate. Charging at an hourly rate would require creating and staffing a billing system that would increase collection costs by an estimated $1.75 million, resulting in higher fees for vessel owners and operators. Moreover, OMB Circular No. A–25 guidance states that user charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services. Thus, the Coast Guard decided not to bill at the conclusion of the inspection using an hourly rate.

The small passenger vessel industry was particularly concerned with the impact of the proposed fees on the ability of many operators, especially small entities, to stay in business. Citing the poor state of the economy and their declining revenues in general, they commented on the cumulative adverse impact of the growing number of Federal, State, and local fees and

regulations. The comments cited more than 60 different fees and assessments, with the number of fees applicable to any given vessel owner depending upon such considerations as the type of operation, the vessel's size, the geographic area of operation, and the number of passengers carried on board a given vessel. Included were such fees as harbor maintenance fees; drug testing fees; State gaming fees; tonnage fees; Animal and Plant Health Inspection Service fees; State agricultural inspection fees; Bureau of Land Management fees; State saltwater fishing license fees; Customs fees; St. Lawrence Seaway tolls; Federal Communications Commission (FCC) inspection fees; State vessel registration fees; State and Federal water use fees; dockage fees; National Marine Fisheries Service permit fees; municipal business registration fees; commercial use permit fees; Federal reef fishing fees; State business license fees; Gulf of Mexico Fishery Management Council fees; International Pacific Halibut Commission permit fees; Mexican Fish Commission permit fees; State fish and game permit fees; retail fish license fees; lobster license fees; and Public Utility Commission fees. Other comments mentioned State and Federal income taxes; State sales and excise taxes; fuel taxes; corporation taxes; municipal head taxes; self-employment taxes; unemployment taxes; winter boat storage fees; lift fees; insurance and maintenance costs; proposed Coast Guard user fees for marine licensing, vessel documentation, and plan review; and compliance with the Oil Pollution Act of 1990, the Americans with Disabilities Act, and the proposed Subchapter T, liferaft, and EPIRB regulations.

While admitting that the proposed vessel inspection fees alone would not likely cause them to consider leaving the industry, comments stated that the increasing costs of operating small passenger vessels is so overwhelming that some owners or operators will have little choice but to exit the industry. They were also concerned that if they went out of business there would be resulting loss of jobs and revenues in the local communities which often rely on tourist dollars for their income. Some small passenger vessel owners stated they were reluctant or unable to pass on the cost of Coast Guard fees by raising their fees to customers. Other small passenger vessel owners were concerned that their customers would be unwilling to pay higher fares, and would seek other, less costly leisure or tourist activities.

The Coast Guard considered the impact that the annual vessel inspection fees would have, particularly on the ability of small passenger vessel operators to remain in business. The Coast Guard held nine public hearings on the proposed rule in order to gather more data on the likely economic impact of the proposed fees. Based upon the comments received, both in writing to the docket and during the public hearings, the Coast Guard reviewed its proposed fees. The Coast Guard recognizes that the economic impact on each owner or operator depends on a myriad of factors including seasonal operation, number of passengers, status of the economy, weather, and the ability to pass on new costs to paying passengers. While the Coast Guard can calculate the dollar amount of impact on individual vessel owners, it cannot calculate the overall economic impact on each vessel owner and the data in the comments did not support a finding of a significant impact on a substantial number of small entities.

In the NPRM, the Coast Guard divided the U.S. fleet into 29 different vessel subcategories for the purpose of establishing annual vessel inspection fees. The Coast Guard selected the fee subcategories after observing patterns in the amount of time it takes to conduct an inspection as a function of inspection type, vessel type, and other factors.

Many comments stated that the costs for inspecting smaller vessels appeared too high and did not accurately reflect the inspection time required for these vessels. In response to these comments, the Coast Guard reexamined its inspection data and found that other breakpoints could be used to establish additional subcategories (see Figure 1). By establishing these additional subcategories, the Coast Guard was able to tier the fees differently in order to achieve a more precise allocation of program costs. While reexamining the inspection data, the Coast Guard also identified some outliers in the data that skewed the average mean inspection time for all vessels of that category. By disregarding these data outliers in computing the mean inspection time, the Coast Guard was able to develop mean inspection times that more precisely represent the average inspection time for each vessel category resulting, in many cases, in lower fees.

FIGURE 1.—NUMBER OF ANNUAL VESSEL INSPECTION FEE SUBCATEGORIES

Vessel category	NPRM[1]	Final rule
Freight Barges	1	3
Freight Ships	1	3
Ready Reserve Fleet Freight Ships	1	0
Industrial Vessels	1	2
Mobile Offshore Drilling Units	4	4
Offshore Supply Vessels	1	2
Offshore Supply Vessels in the Alternate Reinspection Program	0	2
Oceanographic Research Vessels	1	3
Sea-going Towing Vessels	1	1
Tank Barges	1	1
Tankships	1	3
Ready Reserve Fleet Tankships	1	0
Liquefied Gas Tankships	1	1
Small Passenger Vessels	6	9
Sailing School Ships[2]	0	3
Passenger Barges	1	4
Passenger Ships	5	5
Nautical School Ships	1	3
All Other Inspected Vessels	1	1
Totals	29	50

Notes:
[1] Ready Reserve Fleet Freight Ship and Ready Reserve Fleet Tankship are not included as categories in the final rule.
[2] Sailing School Ships were included with Small Passenger Vessels in the NPRM.

For instance, the Coast Guard initially proposed a single fee subcategory for all small passenger vessels less than or equal to 54 feet in length. The annual inspection fee proposed for all vessels in this category was $820. However, during the review of the proposed fees for small passenger vessels, the Coast Guard determined that the inspection data supported creating another subcategory based on length, and recalculated the annual vessel inspection fees based on these new subcategories. The Coast Guard also examined its inspection data for DUKW vessels (ex-Army 2½ ton amphibian trucks), hydrojet boats, swamp tour boats, and yacht club launches. Comments stated that due to these vessels' simplified design, the time required to conduct an inspection on these types of vessels was considerably less than the time required for other small passenger vessels. However, MSIS inspection data supported the creation of separate fee categories for DUKW vessels and hydrojet boats, but did not

indicate a significant difference in the mean inspection time for ''swamp tour boats'' and yacht club launches when compared to other small passenger vessels of the same length. Therefore the following new subcategories were created for small passenger vessels (SPVs):

New subcategories	Annual inspection fee
—DUKW vessels	$450
—Hydrojet boats	470
—SPVs length not greater than 30 feet	545
—SPVs more than 30 feet but not more than 54 feet	670

Several comments stated that fees should be linked to some measure of a vessel's ability to generate revenue, such as the number of passengers a vessel can carry. Others stated that fees should take into account a vessel's actual gross earnings for the year. For instance, several comments asserted that the fees failed to take into account the seasonal nature of many vessel operations, and that vessels operating 3–5 months a year should not be charged the same annual fees as vessels which operate year-round.

The Coast Guard does not agree. The number of passengers for which a vessel is certificated is not a direct measure of actual revenues, it is a measure of potential revenues. The authorized total number of passengers is not necessarily the same as the actual number of passengers a vessel carries during any given voyage. Indeed, many small passenger vessel owner comments indicated that their vessels frequently sail with fewer than half the authorized number of passengers on board. Nor is the number of months a vessel may operate during the year an effective predictor of revenues for that year. For instance, revenue generated by a vessel carrying one-half its passenger capacity for twelve months would be comparable to a similar vessel carrying full passenger capacity for six months.

Although the economic impact of an annual fee may be greater for a vessel with a short operating season, than for a similar vessel with a longer season, the amount of resources expended by the Coast Guard to inspect these vessels is the same whether a vessel operates for one month or for twelve. The Coast Guard based its annual vessel inspection fees on the average cost to the Coast Guard of inspecting each category of vessels.

Some comments expressed the opinion that Coast Guard travel costs ought to reflect the proximity of the inspector to the job site, instead of attributing a fixed amount of average travel time to each vessel per year. Others pointed out that many small passenger vessel owners and operators, especially those located in remote areas, often coordinate inspections with other vessel owners and operators in an effort to minimize Coast Guard travel time.

Coordinating inspections is a common practice within the small passenger vessel industry. This practice most often applies to inspection sites located several hours from the Coast Guard inspection unit. However, Coast Guard MSIS data shows that travel time averages just over two hours per inspection, regardless of the number of inspections conducted during a particular inspection trip. It is not uncommon for inspectors to travel three hours each way to get to an inspection site. In other cases, one inspector may inspect three vessels in the same day. The practice of doing multiple inspections during a single inspection trip allows the Coast Guard to minimize its travel costs; otherwise, average Coast Guard travel costs would be greater. Thus, the Coast Guard considers it reasonable that it include in the vessel owner's annual vessel inspection fee an average of about two hours travel time per vessel per year.

Comments from various industry segments recommended that the Coast Guard not impose any user fees until all the proposed user fee rules have been published, so that the cumulative economic impact of these fees on owners and operators could be properly evaluated.

The user fee rules under development by the Coast Guard may impact some of the same segments of the regulated marine community. One example is the small passenger vessel industry, where vessels are often owned and operated by the same individual who may be subject to both marine licensing fees (CGD 91–002) and inspection fees from this rule. On December 18, 1991, the Coast Guard reopened the comment period for the Marine Licensing NPRM to run concurrently with the comment period for the Commercial Vessel Inspection NPRM. Establishing the concurrent comment period did not provide any new information to the marine licensing user fee rule, or to this rule concerning cumulative impact of the fees. Since these two rules are the most likely to have affected the same segments of the regulated community, and since the Coast Guard did not receive data from the licensing rule comments during the concurrent comment period that necessitated changes in this final rule, the Coast Guard decided not to delay publication of this final rule pending comments on remaining user fee proposals.

A number of comments expressed concern over the apparent duplication of inspection services by Coast Guard, ABS, and other parties for which fees are charged. One commercial shipping representative suggested that when a classed vessel is surveyed by ABS that the survey be accepted by the Coast Guard. One barge company stated that barge owners will incur inspection charges for essentially the same service from both Coast Guard and ABS, i.e., an inspection and survey to ensure the structural integrity of the vessel.

The Coast Guard is aware that inspections or surveys done by other agencies such as FCC, by classification societies like ABS, and by marine surveyors are subject to fees. Although activities of the same type done by different agencies may appear to be at least partially duplicative, the activities have a different purpose. Other third party inspections or surveys, such as those conducted by marine surveyors, are also for a different purpose, usually to meet insurance company requirements.

The Coast Guard agrees that cost savings could result if some inspections or surveys done by one agency could be used by other agencies or third parties for several purposes. Acceptance of third party inspections or surveys as evidence of compliance with Coast Guard regulations is an issue which is being reviewed by the Coast Guard as part of its Maritime Regulatory Reform initiative, and could result in changes to the Coast Guard's marine inspection program. However, such program changes are beyond the scope of this rule.

A few comments suggested that the Coast Guard should consider revising its vessel inspection intervals so that the various inspection requirements such as hull inspection interval and mid-period inspection or COI inspection interval coincide, thereby reducing the number of required Coast Guard inspections. One commercial shipping representative stated that presently, the rules call for drydocking deep-draft vessels twice in five years with a maximum of three years between drydockings. In addition, there are two inspections for certificate renewal and three annual inspections. As it stands now, some owners will schedule an inspection for certificate renewal at the two year interval and then drydock the vessel 6 to 12 months later and again request a new certificate.

The existing certificate expiration schedule and the new drydock provisions do not complement each other and cause both parties additional inspection time and delays. He suggested that adopting a 2.5 year COI with a 15 month reinspection schedule would rectify this situation.

Because the Coast Guard is currently unable to apportion its hull inspection costs more precisely, it chose to compute the annual vessel inspection fee based upon the longest hull inspection interval applicable to each vessel category or subcategory. Although the Coast Guard is reexamining this subject with a view to minimizing the intervals to the extent allowed by law, this and other similar suggestions to revise the Coast Guard inspection intervals would involve program changes which are beyond the scope of this rule.

Some comments recommended deferring follow-on overseas inspections until the next scheduled reinspection or inspection for certification. Follow-on inspections can often be scheduled around or in conjunction with a periodic inspection. Only in extreme cases is it necessary to dispatch an inspector overseas solely for the purpose of conducting a follow-on inspection. Certain deficiencies may impact a vessel's overall safety and must be corrected prior to the next scheduled periodic inspection. The OCMI may extend the compliance date for certain deficiencies which do not jeopardize the safety of the vessel, its passengers, or its crew. Other deficiencies can be cleared administratively by the vessel's master or chief engineer submitting written servicing reports or certifications. The cognizant OCMI possesses the authority to determine whether a deficiency's compliance timeframe can be extended or whether it can be cleared administratively. If it requires a separate overseas trip, then another overseas fee must be paid. The overseas inspection and examination fee will apply to each periodic and follow-on inspection conducted overseas, as well as to each foreign vessel examination conducted overseas.

Some comments indicated that the overseas inspection or examination fee would be excessive for inspections or examinations conducted in locations near the continental U.S. These comments indicated that it may take less time to travel to the inspection site outside the continental U.S. than to travel to other inspection sites within the continental U.S. For instance, one commenter indicated that on occasion his firm, and at least one other U.S. shipping company, has used a Canadian shipyard requiring approximately 35 miles of inspector travel from the Marine Safety Office in Buffalo, New York, for required inspections.

The Coast Guard agrees. The overseas inspection or examination fee in the final rule does not apply to inspections or examinations conducted in Canada, Mexico, or the British Virgin Islands. The overwhelming majority of inspections or examinations conducted in these countries involve only a short commute by either car, boat, or plane. For example, it is not uncommon for Coast Guard inspectors to travel to sites in Canada and Mexico by car or short plane trip, and sites in the British Virgin Islands by short boat trip. Coast Guard data indicates that it actually takes less time to travel to some of these sites than it does to travel to a remote inspection site in the continental United States. For this reason the Coast Guard will not charge the additional overseas inspection or examination fee for these inspections or examinations.

Another comment stated that it would be more equitable to owners whose vessels operate overseas if the Coast Guard charged just one overseas inspection fee per vessel per year instead of charging an overseas inspection fee each time an overseas inspection is conducted.

Overseas inspections involve travel and delay time of approximately 40,000 hours annually. Much of this time is expended in direct support of conducting periodic inspections; however, some of the time is expended conducting follow-on inspections, such as clearing deficiencies (i.e., CG–835s).

Several comments suggested that the Coast Guard should consider expanding the OSV alternate reinspection program for mid-period inspections to MODUs operating outside the U.S. for extended periods. Currently, OSVs under 400 gross tons, operating outside the continental U.S., have the option to participate in an alternate reinspection program, under the regulations contained in 46 CFR 91.27–13. If accepted into the alternate reinspection program, OSV owners perform an alternate reinspection of their vessel, in lieu of having a Coast Guard marine inspector perform the inspection, and then submit results to the OCMI for review.

This rule establishes a lower annual vessel inspection fee for OSVs participating in the alternate reinspection program than for those OSVs which do not participate in the alternate reinspection program. This lower fee reflects the fact that since a marine inspector is not needed for the inspection, it takes less time for the Coast Guard simply to review the results of the alternate reinspection. Although expansion of the alternate reinspection program to include U.S. MODUs operating overseas is beyond the scope of this rule, the Coast Guard will examine this issue independently of this rule.

A few comments suggested that vessel owners should receive either credit or a refund for ''unused certificate time'' to cover that portion of a year during which a vessel may be laid up or otherwise taken out of service.

If the vessel owner pays the annual vessel inspection fee, and the vessel is subsequently laid up or taken out of service for part of the year, the Coast Guard will not issue a refund for the portion of the year for which the vessel was laid up or taken out of service. If a vessel is laid up or out of service on its user fee anniversary date, and the vessel is expected to remain laid up or out of service until its next user fee anniversary date (twelve months later), the vessel owner or operator will not be required to pay the annual vessel inspection fee for that year. When the vessel is placed back in service, however, the owner or operator will be required to pay the full annual vessel inspection fee before the vessel is inspected.

Additionally, OSVs will occasionally surrender their COI in order to operate as an oceanographic research vessel. Upon compliance with the procedures set forth in 46 CFR 3.10, the OCMI issues a Letter of Designation as an Oceanographic Research Vessel. Uninspected vessels may also be issued a Letter of Designation. For the purposes of this rule, vessels operating under a Letter of Designation as an Oceanographic Research Vessel will not be charged an annual vessel inspection fee. However, if the vessel returns to inspected service, it must pay the annual vessel inspection fee for that year before any inspection services are provided.

Several comments suggested Coast Guard marine inspectors should conduct FCC radio inspections, thereby saving vessel owners the cost of the FCC radio inspection fee.

When Coast Guard marine inspectors conduct inspections for COIs or reinspections, they do not conduct the FCC radio inspection. They only verify that a vessel has a valid Safety Radiotelephone Certificate issued by the FCC and ensure that the vessel's radio equipment passes an operational test. The Coast Guard and FCC have previously considered this issue and determined it was not feasible to combine these inspection activities.

Several comments expressed the opinion that if an OSV were to change its service to a freight vessel at any time during the course of a given year, the vessel owner should not have to pay the higher annual vessel inspection fee applicable to freight vessels. Another commenter suggested that since many OSV crewboats and utility boats are inspected under Subchapter T, these vessels should not have to pay an OSV fee that is any higher than the fee for a corresponding small passenger vessel.

Annual vessel inspection fees for vessels certificated for single service will not be adjusted for the year in which a change in vessel service occurs. The vessel's service at the time of its user fee anniversary date will thus determine which annual vessel inspection fee the owner must pay. Regardless of whether or not a crewboat or a utility boat is inspected under Subchapter T or Subchapter I, the vessel is still an OSV. Annual vessel inspection fees are based on the COI, reinspection, and hull inspection intervals applicable to each vessel category, and the average amount of time it takes to conduct each of these inspections. Thus, since small passenger vessel COIs are valid for three years and OSV COIs are valid for two years, an OSV owner should expect to pay a higher annual vessel inspection fee in comparison to a small passenger vessel of equivalent size.

A few comments asked which fee would apply on vessels operating in more than one service under their COI. Vessels which are authorized to operate in more than one service are referred to as ''dual-certificated.'' In such instances, the vessel owner will pay the higher annual vessel inspection fee of the two.

Several questions were raised regarding the examination of foreign vessels and applicable fee payment procedures. For instance, how will fees be collected, and what billing system will be in place?

As with U.S. vessels, foreign vessel fees must be paid before the examination is conducted. The fee may be paid by either the vessel owner, the vessel operator, or some other designated vessel representative (e.g. the vessel's agent); however, the primary responsibility for payment of the fees resides with the vessel owner. Since it is not uncommon for a vessel to arrive in a U.S. port with an expired TVE Letter or LOC, foreign vessel representatives will need to plan accordingly. Payment must be received before the examination is conducted.

The fees listed in § 2.10–125 apply for foreign tank vessel examinations required by the Coast Guard. For vessels receiving a LOC, which is valid for two years, the $1,100 fee must be paid for each initial (or biennial examination, as appropriate), and for the examination conducted in the intervening years. For foreign tank vessels receiving a TVE, which is valid for one year only, the $1,100 fee applies to each annual TVE letter examination. As with annual vessel inspection fees, follow-up visits necessary for corrections of deficiencies related to the above examinations are included in the fees established for TVE and LOC examinations.

Foreign vessel examination fees are based on the cost of providing required examination services, regardless of how many or how few port calls are made during the course of a given twelve month period. If a foreign tank vessel carrying oil in bulk has a TVE conducted one year and does not make another U.S. port call until three years later, its TVE letter will have expired and the $1,100 fee must be paid before another TVE is conducted. If, on the other hand, a chemical tankship has a LOC examination conducted one year and doesn't return to U.S. waters until thirteen months later, its intervening annual examination will be due and the $1,100 fee must be paid before the LOC endorsement examination is conducted.

Comments Beyond the Scope of the Rule

The Coast Guard received many other suggestions for changing the way the Coast Guard conducts its inspection program. These persons believed these changes would result in more efficient use of Coast Guard resources and would reduce the fees. For instance, several small passenger vessel owners recommended that the Coast Guard accept inspections by non-Coast Guard inspectors, such as insurance industry inspectors; qualified members of the marine surveying community belonging to a recognized professional organization; or qualified marine surveyors certified by the Coast Guard. These comments asserted that private sector companies could conduct vessel inspections in a more cost-effective manner.

Also, a few comments indicated that it takes a significant amount of time just to inspect lifejackets on large passenger vessels. They suggested that this activity should be performed by an individual whose services would cost less than a marine inspector, such as a Coast Guard petty officer.

All these comments are beyond the scope of this rule, and the Coast Guard will examine these issues independently of this rule.

Other Changes

In addition to changes discussed in the preceding sections, the Coast Guard made other substantive changes to the proposed regulations.

Applications for Inspections

In the NPRM, the Coast Guard proposed in § 2.01–1, *Applications for inspections,* that application forms would be accompanied by applicable fees, that evidence of payment would be endorsed on the COI, and that payment of fees would be verified before the inspection was scheduled. The Coast Guard has determined that this language is now redundant or inconsistent with the requirements of subpart 2.10 and, therefore, has been deleted from the final rule.

Definitions

Most vessel definitions are based on regulations or statutes. In addition to a few minor revisions to certain proposed definitions which are editorial in nature, the definition for ''Towing vessel'' has been changed to ''Sea-going towing vessel.'' A definition for ''Submersible vessel,'' the ''user fee anniversary date'' and the ''vessel identification number,'' the latter two of which relate to the collection process, have been added, and the definition for Oceanographic research vessel has been corrected to conform with the definition in 46 U.S.C. 2101.

Also, definitions of the following have been revised to conform to revisions made by the Passenger Vessel Safety Act of 1993:

1. Offshore supply vessel
2. Passenger vessel
3. Sailing school vessel
4. Small passenger vessel

The revised definitions in the final rule do not change the category in which a vessel would have been placed by the NPRM. However, the Passenger Vessel Safety Act of 1993 has resulted in certain previously uninspected charter vessels now coming under Coast Guard inspection requirements. When the NPRM was published, these vessels were not inspected by the Coast Guard and, therefore, were not subject to inspection user fees. To comport with the statutory change, these vessels (most of which are now included in the small passenger vessel category) are subject to Coast Guard inspection and to the corresponding fees established in this rule.

The language in Table 2.10–101 has been revised so that the definition for ''all other inspected vessels'' is no longer needed and has been deleted from the final rule.

Public Vessels of the United States and Other Vessels Owned or Operated by Federal Agencies

Under 46 U.S.C. 2109, most public vessels of the United States are excluded from the vessel inspection requirements of Subtitle II of Title 46 United States Code. The provisions of Subtitle II apply only to those public vessels of the United States owned or operated by the Department of Transportation, except for Saint Lawrence Seaway Development and Coast Guard vessels. That means the Maritime Administration is the only Federal agency subject to user fees for subtitle II services provided to their public vessels. Maritime Administration public vessels include vessels of the Ready Reserve Fleet and training vessels operated by the U.S. Merchant Marine Academy and State maritime academies.

Under specific Memorandums of Understanding, the Coast Guard does inspect public vessels of other agencies such as the Military Sealift Command. However, these inspections are not required by Subtitle II, and the cost of providing these services is not recoverable through user fees; nor can these costs be reallocated to other vessels. In addition, Federal agencies may own or operate vessels which are not ''public vessels'' because they are engaged in commerce, or are required for some other reason to be inspected under Subtitle II. The Coast Guard could charge inspection fees for these vessels; however, there would be no benefit to charging fees to these agencies for required inspections. The user fee provisions of the Act are intended to help reduce the Federal budget deficit and the fees collected by the Coast Guard are deposited into the general fund of the U.S. Treasury. Payment of the fees by a Federal agency would result in a payment from a Federal agency to the U.S. Treasury; it would not increase the revenues to the U.S. Treasury. Thus, the Coast Guard has decided to waive collection of annual vessel inspection fees which would be paid directly using Federal appropriated funds.

Overtime Compensation for Civilian Inspectors

Overtime compensation for civilian inspectors is authorized by 46 U.S.C. 2111 and is currently located in 46 CFR 2.01–60 of the regulations. The Coast Guard proposed to update § 2.01–60 and include it with other inspection fees in new Subpart 2.10.

However, the Coast Guard decided not to move this section on overtime compensation regulations into the user fee regulations. Although the Coast Guard's intent was to locate requirements for all inspection fees together, the Coast Guard decided that this action could cause confusion. The overtime compensation fees are required by a different statute and are not part of the user fees established in this rule. Also, since the Coast Guard is authorized to directly recover these amounts to pay for civilian overtime, different accounting procedures are in place.

Although the Coast Guard proposed to update the existing regulations in § 2.01–60, the Coast Guard has decided against doing so at this time. Instead, these regulations will be revised in a future rulemaking. Therefore, the regulations in § 2.01–60 have not been changed in this rulemaking and apply to inspections where civilian inspector overtime is involved.

Excursion Permit Fee

The NPRM proposed to charge a fee for excursion permits. Vessel operators desiring to carry passengers in excess of the number listed on the vessel's COI must apply to the cognizant OCMI for issuance of an excursion permit. Excursion permits are issued by the OCMI only after the vessel has been inspected to ensure that the proposed excursion would meet minimum safety requirements. The MSIS data indicates that only a limited number of these permits are issued each year (79 in 1989, 56 in 1990, and 85 in 1991), despite verbal comments during the public hearings which suggested that a substantially greater number of such permits are issued annually. Because the MSIS data on these permit inspections is incomplete, proposed section 2.10–106 has been deleted from this rule. The Coast Guard may, however, propose an excursion permit fee when more data becomes available in the future.

Collection Procedures

Since the NPRM was published, a collection system has been established for the payment of annual vessel inspection fees, foreign vessel examination fees, and overseas inspection fees. As a result, specific collection procedures have been added to this rule.

This rule specifies that payments may be made by check or money order only. Wire transfers and credit cards are not available payment options at this time. If desired, vessel owners and operators may pay inspection or examination fees for several different vessels in the same transaction, provided that the vessel name and vessel identification number of each vessel for which a payment is being made accompanies the payment. All inspection and examination fees must be paid before the inspection or examination service is provided.

Regarding payment of the annual vessel inspection fee, proposed § 2.10–101(b) indicated that a U.S. vessel owner would pay the annual vessel inspection fee on the anniversary date of the COI. This requirement has been changed. The vessel owner must pay the annual inspection fee on or before the vessel's user fee anniversary date, as defined in § 2.10–25. Approximately six weeks prior to this date, the Coast Guard will send a user fee notification letter to the owner of each U.S. commercial vessel inspected by the Coast Guard. The notification letter will include the vessel's name, its official number, the vessel's user fee anniversary date (payment due date), the amount due, and the address to which the payment must be sent to ensure that the fee is credited to the proper vessel.

All user fee payments will be processed by NationsBank in Atlanta, Georgia. Inspection and examination fee payments will not be accepted at Coast Guard Marine Safety or Marine Inspection Offices. The only exception to this policy involves payment of overseas inspection and examination fees, which must accompany the request for an overseas inspection or examination. Under the computerized payment tracking system established by the Coast Guard, all payment histories should be updated within one business day following receipt of the payment by NationsBank. An 800 number has also been established to handle start-up user fee inquiries and to provide payment information. The number, 1–800–941–3337 will remain in effect during initial implementation of the rule.

Penalties for Failure To Pay

Section 2110 of Title 46 U.S.C. authorizes a civil penalty of up to $5,000 for failure to pay fees and authorizes the Secretary of the Treasury to withhold customs clearance for vessels which fail to pay fees, when so requested by the Secretary of Transportation. Inspection and examination services will not be provided unless the Coast Guard can verify that the appropriate fees have been paid. The Coast Guard will treat checks returned due to insufficient funds, account closed, or any other such reason, as a delinquent payment and will seek to recover appropriate collection and enforcement costs from the appropriate party as permitted by law.

Renumbered Sections

This rule renumbers and reorganizes many of the sections in the proposed regulations (see Figure 2).

FIGURE 2.—CHANGES TO SECTION NUMBERS IN THE REGULATION

NPRM	Final Rule
(None)	§ 2.10–1
(None)	§ 2.10–5
(None)	§ 2.10–10
§ 2.10–11	(None)
(None)	§ 2.10–20
§ 2.10–1	§ 2.10–25
§ 2.10–101	§ 2.10–101
§ 2.10–103	§ 2.10–105
§ 2.10–105	§ 2.10–115
§ 2.10–106	(None)
§ 2.10–107	§ 2.10–120
§ 2.10–109	§ 2.10–125
§ 2.10–110	§ 2.10–130
§ 2.10–13	§ 2.10–135

Regulatory Evaluation

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 but does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Fees are mandated by the Omnibus Budget Reconciliation Act of 1990, which amended 46 U.S.C. 2110 to remove long-standing prohibitions against charging fees for Coast Guard commercial vessel inspection and examination services.

The Act required the Coast Guard to establish fees for services provided under Subtitle II of Title 46 United States Code. These services include: Licensing and documentation of merchant marine personnel; commercial vessel documentation; commercial vessel inspections and examinations; equipment approval and factory inspections; and vessel plan review and new vessel construction. Whereas the total cost of these user fees is expected to be less than $35 million, this rulemaking deals only with vessel inspection user fees, which are estimated at $17.2 million annually. Projected receipts are well below the $100 million threshold which would make this subject to the provisions of section 6(a)(3) of Executive Order 12866, however the Coast Guard has prepared a final Regulatory Evaluation. The Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES.** It concluded that the financial impact on the public, including most of the individuals subject to the user fees in this rule, is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule 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).

Based upon a careful review of the public comments and public testimony, the Coast Guard developed a fee structure which is intended to help reduce the impact on owners and operators of small business entities. Based on the establishment of additional vessel subcategories, which resulted in lower fees in many instances, the Coast Guard certifies under 5 U.S.C. 605(b) that these fees are not expected to have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Existing requirements for applications for inspection are covered under OMB control number 2115–0007. Additional requirements under this rule involve the collection of funds, and of such information as is required to calculate the annual vessel inspection fee due and to ensure proper collection of fees. This information includes the name of the vessel, the vessel identification number, and other identifying information which will permit follow-up action if an incorrect fee amount is submitted or a payment instrument fails to clear NationsBank.

A new requirement is established for those owners choosing to pay annual vessel inspection fees for future years in advance. The owner must, in a written request to the Coast Guard, indicate the vessel identification number and the number of years for which the owner desires to prepay the annual vessel inspection fee. If a vessel is permanently removed from Coast Guard certification, the owner may seek a refund of the remaining prepayment amount by submitting a written request to the Coast Guard.

Another new requirement is established for organizations seeking an exemption from the annual vessel inspection fee for vessels owned or operated by their organization. In order to be eligible for an exemption, organizations must submit a written request to the Coast Guard and provide evidence that their organization is charitable in nature, not for profit, and youth-oriented, and that each vessel is owned or operated by the organization and is used exclusively for training youths in boating, seamanship, and navigation skills.

Finally, a new requirement is established for Federal agencies owning or operating inspected vessels for which fees would be paid directly using Federal appropriated funds. The Coast Guard will waive collection of the annual vessel inspection fee for these vessels. However, by October 1 of each year, agencies owning or operating eligible vessels must provide the Coast Guard with the name and the vessel identification number of each vessel to which the waiver will apply.

The additional collection of information burden placed on the public by this rule is expected to be minimal. These new collection of information requirements were approved by OMB and are covered under OMB control number 2115–0617.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule establishes user fees for vessel inspection and examination services. This rule will result in the payment of fees by States, State agencies, and local governments for inspection services provided to vessels owned by such entities. The impact of these fees on these entities is expected to be minimal. While some States and local governments may be required to pay fees, the fees will be solely due to the fact that the entity owns or operates the vessel, not due to a mandate imposed on them as a government entity.

Environment

The Coast Guard has considered the environmental impact of this rule and has concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Section 2.B.2 of that instruction excludes ''administrative actions and procedural regulations and policies which clearly do not have any environmental impacts.'' A Categorical

Exclusion Determination is available in the docket for inspection or copying.

List of Subjects

33 CFR Part 143

Continental shelf, Fees, Marine safety, Occupational safety and health, Vessels.

46 CFR Part 2

Fees, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends Title 33, Chapter I, Subchapter N, Part 143 and Title 46, Chapter I, Subchapter A, Part 2 as follows:

Title 33—[Amended]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 143—DESIGN AND EQUIPMENT

1. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46; section 143.210 is also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

2. Section 143.210 is amended by adding a new paragraph (c) to read as follows:

§ 143.210 Letter of Compliance.

* * * * *

(c) The owner or operator of a foreign mobile offshore drilling unit requiring a letter of compliance examination must pay the fee prescribed in 46 CFR 2.10–130.

Title 46—[Amended]

SUBCHAPTER A—PROCEDURES APPLICABLE TO THE PUBLIC

PART 2—VESSEL INSPECTIONS

3. The authority citation for Part 2 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703, 5115, 8105; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec. 1).

PART 2—VESSEL INSPECTIONS

4. In section 2.01–1 paragraph (b) is revised to read as follows:

§ 2.01–1 Applications for inspections.

(a) * * *

(b) *To whom submitted.* The completed form must be submitted to the Officer in Charge, Marine Inspection, in the Marine Inspection Zone within which the inspection is to be conducted.

* * * * *

5. In section 2.01–6 the section heading is revised, paragraph (a)(2) is redesignated as paragraph (a)(2)(i) and a new paragraph (a)(2)(ii) is added to read as follows:

§ 2.01–6 Certificates issued to foreign vessels.

(a) * * *

(2) (i) * * *

(ii) Letter of Compliance—issued to Foreign Mobile Offshore Drilling Units engaged in Outer Continental Shelf activities under 33 CFR 143.210.

* * * * *

6. A new Subpart 2.10 is added to read as follows:

Subpart 2.10—Fees

Sec.

2.10–1 Applicability.
2.10–5 Exemptions.
2.10–10 Waivers.
2.10–20 General requirements.
2.10–25 Definitions.
2.10–101 Annual vessel inspection fee.
2.10–105 Prepayment of annual vessel inspection fees.
2.10–115 Changes in vessel service.
2.10–120 Overseas inspection and examination fees.
2.10–125 Fees for examination of foreign tankships.
2.10–130 Fees for examination of foreign mobile offshore drilling units.
2.10–135 Penalties.

Subpart 2.10—Fees

§ 2.10–1 Applicability.

(a) This subpart establishes vessel inspection fees for all vessels required to have a Certificate of Inspection and vessel examination fees for all foreign vessels required to have either a Letter of Compliance or a Tank Vessel Examination Letter.

(b) The fees in this subpart do not apply to:

(1) Vessels being inspected for the initial issuance of a Certificate of Inspection;

(2) Foreign passenger vessels;

(3) Training vessels operated by State maritime academies; and

(4) Public vessels of the United States, except for Maritime Administration vessels.

§ 2.10–5 Exemptions.

(a) Vessels owned or operated by an organization which is charitable in nature, not for profit, and youth-oriented may be exempted from the fees required by this subpart provided that the vessels are used exclusively for training youths in boating, seamanship, and navigation skills.

(b) Vessel owners or operators must submit a written request for exemption to the Officer in Charge, Marine Inspection of the Marine Inspection Zone in which the vessel normally operates. The exemption request must provide the vessel name, the vessel identification number, and evidence that the organization and the vessel meet the criteria set forth in paragraph (a) of this section.

§ 2.10–10 Waivers.

The Commandant (G–MP) will waive collection of vessel inspection fees in this subpart for a Federally-owned or operated vessel if the fee would be directly paid by an agency acting as the vessel owner using Federal appropriated funds. By October 1 of each year, Federal agencies shall provide Commandant (G–MP) with a list of the names and vessel identification numbers of vessels for which a fee waiver is requested.

§ 2.10–20 General requirements.

(a) Unless otherwise specified, vessel owners must pay the fees required by this subpart before inspection or examination services are provided.

(b) Fees required by this subpart must be paid in U.S. currency by check or money order, drawn on a U.S. bank, and made payable to the U.S. Treasury.

(c) All payments must be accompanied by the vessel name and its vessel identification number.

(d) Unless otherwise specified, fees required by this subpart must be mailed to the following address: USCG Inspection Fees, PO Box 105663, Atlanta, GA 30348–5663.

(e) For purposes of this subpart, the address for Commandant (G–MP) is: Commandant (G–MP), United States Coast Guard, 2100 Second Street S.W., Washington, DC 20593–0001.

(f) Information concerning a vessel's user fee anniversary date may be obtained from any Coast Guard Marine Safety or Marine Inspection Office.

§ 2.10–25 Definitions.

The following definitions apply to this subpart:

Drill ship MODU means a mobile offshore drilling unit with a ship shape displacement hull intended for operation in the floating condition.

Freight barge means a non-self-propelled vessel carrying freight for hire.

Freight ship means a self-propelled freight vessel.

Freight vessel means a motor vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

Industrial vessel means a vessel which, by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. For the purposes of this subpart, this classification includes such vessels as dredges, cable layers, derrick barges, and construction and wrecking barges, but does not include vessels which carry passengers or freight for hire, OSVs, oceanographic research vessels, or vessels engaged in the fisheries.

Liquefied gas tankship means a self-propelled vessel equipped with cargo tanks primarily designed to carry liquefied or compressed gases in bulk.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources that is: seagoing and 300 or more gross tons and self-propelled by machinery; Seagoing and 100 or more gross tons and non-self-propelled; or more than 65 feet in length and propelled by steam.

Nautical school vessel means a vessel operated by or in connection with a nautical school or an educational institution under section 13 of the Coast Guard Authorization Act of 1986, Public Law 99–640.

Oceanographic research vessel means a vessel that is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

Offshore supply vessel means a motor vessel that is of at least 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, individuals in addition to the crew, and equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Passenger barge means a non-self-propelled passenger vessel, including a prison barge or a barge which carries occupied recreational vehicles.

Passenger ship means a self-propelled passenger vessel.

Passenger vessel means a vessel of at least 100 gross tons:

(1) Carrying more than 12 passengers, including at least one passenger for hire;

(2) That is chartered and carrying more than 12 passengers; or

(3) That is a submersible vessel carrying at least one passenger for hire.

Sailing school vessel means a vessel of less than 500 gross tons, carrying more than 6 individuals who are sailing school instructors or sailing school students, principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion, and owned or demise chartered and operated by a qualified organization during such times as the vessel is operated exclusively for the purposes of sailing instruction.

Sea-going towing vessel means a sea-going commercial vessel engaged in or intending to engage in the service of pulling, pushing or hauling alongside, or any combination of pulling, pushing or hauling alongside.

Self-elevating MODU means a mobile offshore drilling unit with movable legs capable of raising its hull above the surface of the sea.

Semi-submersible MODU means a mobile offshore drilling unit with the main deck connected to an underwater hull by columns or caissons, that is intended for drilling operations in the floating condition.

Small passenger vessel means a vessel of less than 100 gross tons:

(1) Carrying more than 6 passengers, including at least one passenger for hire;

(2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

(3) That is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or

(4) That is a submersible vessel carrying at least one passenger for hire.

Submersible MODU means a mobile offshore drilling unit intended for drilling operations in the bottom-bearing condition, having the main deck connected to an underwater hull or pontoons by way of columns or caissons.

Submersible vessel means a vessel that is capable of operating below the surface of the water.

Tank barge means any tank vessel not equipped with means of propulsion.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

Tankship means any tank vessel propelled by power or sail, including an integrated tug and barge designed to operate together only in the pushing mode.

User fee anniversary date means the date on which a vessel's annual inspection fee is due each year. Once established by the Coast Guard, a vessel's user fee anniversary date remains fixed for as long as the vessel remains in service.

Vessel identification number (VIN) means a U.S. official number, a number assigned by a State, a number assigned by the Coast Guard, or a Lloyd's Register of Shipping identification number issued to a U.S. or foreign commercial vessel for purposes of vessel identification. For U.S. vessels, VIN means the number listed on the Certificate of Inspection. For foreign vessels, VIN means either the Lloyd's Register of Shipping identification number or the number assigned by the Coast Guard.

§ 2.10–101 Annual vessel inspection fee.

(a)(1) Unless otherwise provided by this subpart, each vessel required to have a Certificate of Inspection is subject to the annual vessel inspection fee listed in Table 2.10–101 for its vessel category.

(2) A vessel certificated for more than one service must pay only the higher of the two applicable fees in Table 2.10–101 of this section.

(b) The vessel owner or operator must pay the annual vessel inspection fee each year on or before the vessel's user fee anniversary date, unless the fee has been prepaid under § 2.10–103 of this subpart.

(c) Payment of the annual vessel inspection fee entitles a vessel to all inspection services related to compliance with its Certificate of Inspection, including but not limited to the inspection for renewal of the Certificate of Inspection, reinspections (midperiod inspections), hull (drydock) inspections, deficiency inspections, damage surveys, repair and modification inspections, change in vessel service inspections, permit to proceed inspections, drydock extension inspections, and all inspections required for the issuance of international certificates.

(d) Entitlement to inspection services for the current year remains with the vessel if it is sold. The entitlement to inspection services may not be transferred to any other vessel.

TABLE 2.10–101.—ANNUAL VESSEL INSPECTION FEES FOR U.S. AND FOREIGN VESSELS REQUIRING A CERTIFICATE OF INSPECTION

Any inspected vessel not listed in this table	$1,030
Freight Barges:	
Length not greater than 150 feet	495
More than 150 feet but not more than 300 feet	610
More than 300 feet	955
Freight Ships:	
Length not greater than 100 feet	1,425
More than 100 feet but no more than 300 feet	1,870
More than 300 feet	5,410
Industrial Vessels:	
Length not greater than 200 feet	1,435
More than 200 feet	2,550
Mobile Offshore Drilling Units (MODUs):	
Drill ship MODUs	6,710
Submersible MODUs	4,695
Self-elevating MODUs	4,695
Semi-submersible MODUs	8,050
Nautical School Vessels:	
Length not greater than 100 feet	835
More than 100 feet but not more than 200 feet	1,450
More than 200 feet	7,205
Oceanographic Research Vessels:	
Length not greater than 170 feet	840
More than 170 feet but not more than 240 feet	1,980
More than 240 feet	3,610
Offshore Supply Vessels:	
Length not greater than 140 feet	1,135
More than 140 feet	1,470
Offshore Supply Vessels: Alternate Reinspection Program*:	
Length not greater than 140 feet	940
More than 140 feet	1,260
Passenger Barges:	
Less than 100 gross tons and:	
Certified for fewer than 150 passengers	825
Certified for 150 or more passengers	1,110
100 gross tons or more and:	
Certified for fewer than 150 passengers	2,215
Certified for 150 or more passengers	2,525
Passenger Ships:	
Length not greater than 250 feet:	
Certified for fewer than 150 passengers	3,600
Certified for 150 or more passengers	4,050
More than 250 feet but not more than 350 feet	5,330
More than 350 feet but not more than 450 feet	6,835
More than 450 feet	14,650
Sailing School Vessels:	
Length not greater than 30 feet	530
More than 30 feet but not more than 65 feet	560
More than 65 feet	980
Sea-going Towing Vessels	2,915
Small Passenger Vessels:	
DUKW vessels	450
Hydrojet boats	470
All other small passenger vessels:	
Length not greater than 30 feet	545
More than 30 feet but not more than 54 feet	670
More than 54 feet but not more than 65 feet	750
More than 65 feet but not more than 130 feet	975
More than 130 feet but not more than 160 feet:.	
Certified for fewer than 150 passengers	1,215
Certified for 150 or more passengers	2,585
More than 160 feet	2,585
Tank Barges	500
Tankships:	
Length not greater than 100 feet	1,295
More than 100 feet but not more than 300 feet	2,310
More than 300 feet	5,805
Liquefied Gas Tankships	12,120

*Note: Eligibility for the reduced annual vessel inspection fee for Offshore Supply Vessels is contingent upon the vessel's continued acceptance in the alternative reinspection program by the cognizant Officer in Charge, Marine Inspection.

§ 2.10–105 Prepayment of annual vessel inspection fees.

(a) Vessel owners may prepay the annual vessel inspection fee for any period of not less than three years, and not more than the design life or remaining expected service life of the vessel.

(b) To prepay the annual vessel inspection fee for a period of three or more years, the owner must submit a written request to Commandant (G–MP) specifying the vessel identification number and the period for which prepayment is to be made.

(c) The total of the annual fees for the requested prepayment period will be discounted to its net present value using the following formula:

$$PV = \sum_{t=0}^{n} \frac{R_0(1+\pi)^t}{(1+i)^t}$$

Where:

PV is the Present Value of the series of annual user fees to be prepaid (the net amount to be prepaid)

R_O is the published user fee of the vessel

i is the interest rate for 10-year Treasury notes at the time of prepayment calculation

π is the rate of inflation (based on projected military personnel costs at the time of prepayment calculation)

n is the total number of years to be prepaid

t is the number of years after prepayment of the fee, for each annual increment (t=0, 1, 2, 3 ... n)

(d) When the annual vessel inspection fee has been prepaid, the entitlement to inspection services for the prepayment period attaches to the vessel and remains with the vessel if it is sold. The entitlement to inspection services may not be transferred to any other vessel.

(e) If a vessel is removed from Coast Guard certification and the vessel owner surrenders the vessel's Certificate of Inspection, the owner may request a refund of the remaining prepayment amount. The annual vessel inspection fee will not be refunded for the year in which the Certificate of Inspection is surrendered. The request for refund must be submitted to the Officer in Charge, Marine Inspection to whom the Certificate of Inspection is surrendered.

§ 2.10–115 Changes in vessel service.

(a) If a vessel certificated for a single service changes service, the annual vessel inspection fee is not adjusted during the year in which a change in service occurs. The annual vessel inspection fee for the new vessel category is payable on the vessel's user fee anniversary date immediately following the date of the change in service.

(b) If a change in service occurs and the annual vessel inspection fee has been prepaid, Commandant (G–MP) will recalculate the prepayment amount based on the new vessel category and advise the owner of available prepayment options.

§ 2.10–120 Overseas inspection and examination fees.

(a) In addition to any other fee required by this subpart, an overseas inspection and examination fee of $4,585 must be paid for each vessel inspection and examination conducted outside the United States and its territories. This fee does not apply to vessel inspections and examinations conducted in Canada, Mexico, or the British Virgin Islands.

(b) The overseas inspection and examination fee for each vessel must accompany each request to the cognizant Officer in Charge, Marine Inspection for an overseas inspection or examination.

§ 2.10–125 Fees for examination of foreign tankships.

Each foreign tankship of a country party to the International Convention for the Safety of Life at Sea, 1974 as amended, must pay:

(a) For examination for the issuance of a Letter of Compliance under § 2.01–6(a)(2)(i) of this part, or examination for the annual endorsement to a Letter of Compliance, a fee of $1,100.

(b) For examination for the issuance of a Tank Vessel Examination Letter under § 2.01–6(a)(3) of this part, a fee of $1,100.

§ 2.10–130 Fees for examination of foreign mobile offshore drilling units.

Each foreign mobile offshore drilling unit must pay:

(a) For examination for the issuance of a Letter of Compliance indicating compliance with the design and equipment standards of either the documenting nation or the International Maritime Organization Code for Construction and Equipment of Mobile Offshore Drilling Units, a fee of $1,830.

(b) For examination for the issuance of a Letter of Compliance indicating compliance with the design and equipment standards of 46 CFR part 108, the inspection fee listed in Table 2.10–101 of this subpart for the same type of mobile offshore drilling unit.

§ 2.10–135 Penalties.

(a) A vessel owner or operator who fails to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(b) In addition to the fees established in this subpart, the Coast Guard may recover collection and enforcement costs associated with delinquent payments of, or failure to pay, a fee. Coast Guard inspection and examination services may also be withheld pending payment of outstanding fees owed to the Coast Guard for inspection and examination services provided.

(c) Each District Commander or Officer in Charge Marine Inspection may request the Secretary of the Treasury, or the authorized representative thereof, to withhold or revoke the clearance required by 46 U.S.C. app. 91 of a vessel for which a fee or charge established under this part has not been paid or until a bond is posted for the payment.

Dated: March 2, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 95–6034 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–P

federal register

Monday
March 13, 1995

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Government-to-Government Compact for Regulation of Class III Gaming Between the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon, which was executed on January 6, 1995.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: March 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6412 Filed 3–10–95; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
March 13, 1995

Part VII

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–212]

RIN 2115–AD93

National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that permit it to review information from the National Driver Register on an applicant prior to issuing or renewing a license, certificate of registry (COR), or merchant mariner's document (MMD). This proposal also addresses OPA 90 provisions that permit the Coast Guard to review the criminal records of applicants prior to issuing a license, COR or MMD. In addition, it proposes regulations that permit criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date. The proposed rulemaking will provide the Coast Guard an opportunity to identify an applicant who has been convicted of certain motor vehicle offenses or convicted of certain serious crimes.

DATES: Comments must be received on or before June 12, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–212), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn.: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Cratty, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267–6740. This telephone records messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–212) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all documents and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

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

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, OPA 90 Staff, and Ms. Jacqueline Sullivan, Project Counsel, Office of the Chief Counsel (G–LRA).

Background and Purpose

1. General

Under the authority of 46 U.S.C. 7101, the Coast Guard issues licenses to qualified officers such as masters, mates, pilots, engineers, operators, and radio officers. It also issues certificates of registry (CORs) to qualified staff officers such as pursers, medical doctors, and professional nurses.

The Coast Guard issues merchant mariner's documents (MMDs), with certain exceptions described in 46 U.S.C. 8701, to vessel personnel for service aboard U.S. flag merchant vessels of more than 100 gross tons which operate on waters other than rivers and lakes. The MMD serves as a certificate of identification and qualification, authorizing work in different capacities on deck and in the engine and steward's departments. The MMD, with an appropriate endorsement, is also the credential issued to qualified tankermen. Many merchant mariners who hold licenses and CORs also hold MMDs.

All licensing and documentation transactions are processed at Coast Guard Regional Examination Centers (RECs) exercising the authority of the Officer in Charge, Marine Inspection (OCMIs).

Sections 4101 (a) and (b) and section 4102(e) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amend 46 U.S.C. 7101, 7302, and 7109, respectively, to authorize the Coast Guard to conduct criminal record checks of any individual applying for a license, COR, or MMD; for a raise in grade of a license or COR; for a renewal of a license, COR, or MMD; or for an endorsement of an MMD with a new expiration date. Individuals with criminal records may be unsuitable candidates for a license, COR, or MMD because they may present a risk to passengers, fellow crew members, or the safe operation of a vessel.

As amended, 46 U.S.C. 7101 and 7302 prohibit the Coast Guard from issuing a license, COR, or MMD to an applicant unless the applicant makes available to the Coast Guard any information contained in the National Driver Register (NDR) related to an offense committed by the applicant that is described in sections 205(a)(3) (A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note). These offenses are: operation of a motor vehicle under the influence of, or while impaired by, alcohol or a controlled substance; and any traffic violation(s) arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other motor vehicle offenses as specified in sections 205(a)(3) (A) and (B) of the NDR Act of 1982, indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Section 4105(b) of OPA 90 amends 23 U.S.C. 401 note, to require the Coast Guard to make the information received from the NDR available to the applicant for review and written comment before the Coast Guard uses this information as a basis for denying, suspending, revoking, or taking other action on that individual's license, COR, or MMD.

Before Congress enacted OPA 90, an individual who applied for a license, COR, or MMD was not required to provide the Coast Guard with NDR information. However, an applicant for a license or COR was asked on the application form if he or she had been convicted of any offense(s) other than minor traffic violation(s). Information provided by the applicant regarding conviction(s) for other than minor traffic violation(s), including Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), was used to evaluate the applicant's qualifications to hold a license or COR.

2. Criminal Record Review Under Current Regulations

a. Licenses and CORs

The current regulations at 46 CFR 10.205, ''Requirements for original licenses and certificates of registry,'' require the applicant to have his or her fingerprints taken during the application process. The Coast Guard uses the fingerprints to determine if a criminal record exists for the individual. Section 10.205(f)(2) authorizes the OCMI to reject an application if the criminal record check, or other information, indicates that an applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities associated with a license or COR. The OCMI notifies the applicant of the reason(s) for disapproval.

Section 10.205(f)(4) indicates that, in the event a license or COR has been issued before adverse information on the applicant's character or habits of life, or information indicating that the application is false or incomplete, is obtained the OCMI may notify the individual that the license or COR is null and void and direct the holder to return the license or certificate to the OCMI.

Under 46 CFR 10.209, ''Requirements for renewal of a license,'' each renewal applicant must use a standard form furnished by the Coast Guard. The form asks the applicant to identify any criminal convictions or history of drug use. Under § 10.209(b), an applicant may not have his or her license renewed if facts which would render a renewal improper have come to the Coast Guard's attention.

The Coast Guard currently performs a license renewal criminal record check when an individual has identified a conviction or drug use on the application. In addition, the Coast Guard performs a criminal record check on applicants for renewal whom it suspects have criminal records or a history of drug use. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) recognizes these existing Coast Guard procedures.

Related regulations in 46 CFR part 10, ''Requirements for raise of grade of a license'' (§ 10.207) and ''Issuance of duplicate of license or certificate of registry'' (§ 10.219), currently do not address criminal record checks.

b. Merchant Mariner's Documents

The regulations contained at 46 CFR part 12, ''Certification of Seamen,'' do not address fingerprinting an applicant for an MMD specifically for a criminal record check; however, under existing practice, the Coast Guard fingerprints an individual applying for his or her original MMD and performs a criminal record check on the applicant. The Coast Guard does not fingerprint and check the criminal record of a person obtaining a duplicate MMD or an additional MMD endorsement.

Under law existing prior to OPA 90, the Coast Guard was not required to consider the character and habits of life of an applicant for an MMD as it was for licenses and CORs. The only specific statutory provision concerning dangerous drug use or criminal convictions authorized the Coast Guard to deny an MMD to an applicant convicted for a dangerous drug offense within 10 years prior to the date of application (46 U.S.C. 7503). The Coast Guard may also deny an MMD to a person who has ever used or has ever been addicted to a dangerous drug unless the applicant provides satisfactory proof that he or she is suitable for employment in the merchant marine.

3. National Driver Register Access

The National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation (DOT) maintains the NDR, which is a nationwide repository of information on drivers. The NDR is part of a voluntary cooperative program that assists State motor vehicle driver licensing agencies and certain Federal agencies in gaining access to data on an individual's motor vehicle driving record. The NDR Act of 1982 prohibits the use of information in the NDR that is more than 3 years old, unless that information relates to a current suspension or revocation of the individual's license to operate a motor vehicle.

At present, access to the NDR must be made through participating States. DOT has proposed legislation to amend section 307 of the NDR Act of 1982 to allow direct NDR access by Federal agencies. If the proposed legislation is enacted, the Coast Guard intends to adopt the direct access methodology.

Discussion of Proposed Rules

In the discussion of the proposed rules, and the proposed rules themselves, the procedures incident to a criminal record check and those incident to obtaining information from the National Driver Register are treated separately. Although there are differences, the basic structure is the same: an applicant provides the Coast Guard with the means of searching a data base and the Coast Guard evaluates the information received to determine whether there is reason to deny a license, COR, or MMD to the applicant. The decision is based on the nature of the incidents reported, the number of incidents, and when the incident occurred. The Coast Guard is considering whether the processing of incidents reported under both systems can be consolidated in the final rule and welcomes comments and suggestions in this regard.

1. Criminal Record Review

Congress has provided for new requirements on all merchant mariners in order to promote a drug and alcohol-free maritime industry. These requirements focus on chemical testing, criminal record reviews, and NDR checks. The Coast Guard proposes to amend 46 CFR parts 10 and 12 to reflect its authority to review the criminal record of an individual applying for a license, COR, or MMD. The proposed rules would continue the existing requirements concerning criminal record checks for the issuance of original licenses or CORs and extend them to original issuance of MMDs.

The Coast Guard also would amend the appropriate sections of 46 CFR part 10 and 12 to allow criminal record checks of any individual applying for a raise in grade of a license or COR; a renewal of a license, COR, or MMD; or an endorsement of an MMD with a new expiration date.

The Coast Guard believes that an applicant who has been convicted of violent criminal offenses or serious property-related offenses may pose a threat to ship personnel, passengers, the marine environment, and safe operation of the ship, and should not be given the duties and responsibilities of a licensed officer or holder of a COR or an MMD. Life on board a ship is unique in that the protections normally afforded the public (i.e., law enforcement) are not as readily available. Evidence that an applicant has criminal convictions must

be carefully weighed by the OCMI to ensure marine safety.

In order to provide specific guidance on who has a ''conviction,'' the Coast Guard proposes to define ''conviction'' to include a finding of guilty by judgment or plea by a court of record in the United States. The definition would cover convictions for criminal felonies or misdemeanors or for offenses described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). It would also cover expungements, deferred adjudications, and other forms of plea agreements. An expungement of a conviction would not be considered unless the expungement was based upon a showing that the conviction was in error.

The tables in §§ 10.201(h) and 12.02–4(c) list minimum assessment periods after various criminal convictions before which an application will normally not be approved and the maximum periods that a conviction will normally be considered disqualifying. The lists are not intended to be comprehensive. They include major categories of criminal offenses. If an applicant has been convicted of an offense that does not appear on the list, the OCMI may establish the assessment period depending on the nature of the crime, using the list as a guide. Because licensed officers and individuals employed under CORs have greater responsibilities than MMD holders, additional categories of offenses have been included in Table 10.201(h).

An assessment period commences when an applicant with a conviction is no longer incarcerated or under supervised parole or probation. A period of unsupervised parole or probation would be counted as part of the assessment period. The OCMI will consider successful completion of all conditions of parole or probation as evidence that the applicant is suitable for service in the merchant marine.

In all cases where the application is complete and the applicant is required to complete an assessment period before issuance or renewal of a merchant mariner's credential, the OCMI would notify the applicant in writing stating the reason for denial and explaining the right to appeal and the appeal process as provided for in § 1.03 of this chapter.

There are several purposes in establishing minimum and maximum assessment period guidelines in these tables. The tables give applicants specific notice that certain criminal convictions may delay issuance of merchant mariner's credentials and the approximate length of the delay they can expect. Following a conviction, a period of time must elapse for the individual to demonstrate that he or she does not present a safety risk to fellow crew and passengers while at sea. The minimum periods, as proposed in the tables, are estimates of the time required to permit the OCMI to determine that, despite the criminal conviction, the applicant may now be entrusted with the duties and responsibilities of a merchant mariner. These estimates are based upon the nature of the criminal conviction, with longer periods required for convictions involving violence or drugs. The nature of violent or dangerous drug convictions are such that, for the Coast Guard to adequately safeguard the lives and well-being of crew and passengers, it must be reasonably confident that these types of offenses will not occur at sea.

In addition, a merchant mariner who holds a Coast Guard issued credential is responsible for knowing, and following, a large body of maritime law and regulation, much of it related to safety, health or environmental protection. Before issuing a credential, the Coast Guard must be satisfied that an applicant will obey these laws and regulations without direct and immediate oversight by a law enforcement agency. It would be imprudent, in such circumstances, to issue a credential to an applicant with a criminal record without first waiting beyond his or her court-ordered sentence to see whether the applicant was a trustworthy and responsible member of society absent the constraints of the criminal justice system. Recidivism among those with criminal convictions is a legitimate Coast Guard concern. The assessment periods provide a basis for excluding from the merchant marine those individuals who may have recidivist tendencies and a basis for concluding that these tendencies do not exist.

The guidelines in the tables are also intended to promote national uniformity of results with respect to review of criminal convictions in the issuance of merchant mariner's credentials. The tables are designed to provide guidance for the OCMI when he or she is faced with an applicant who has criminal convictions. This guidance will ensure that all applicants will be treated fairly and uniformly, regardless of where they apply.

The minimum assessment periods listed in the tables represent the shortest amount of time in which the applicant normally may demonstrate that he or she is now responsible enough to be entrusted with the duties of a merchant mariner. If a person applies before the minimum assessment period for his or her conviction has elapsed, then the applicant must provide, as part of the application, compelling evidence of suitability for employment. Such evidence includes, but is not limited to, the following: proof of completion of an alcohol- or drug-abuse treatment or education program; active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous; character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine; steady employment; or successful completion of all conditions of parole or probation. Any application submitted prior to the minimum assessment period and which does not include such additional evidence of suitability for employment in the merchant marine will be considered incomplete and will not be processed.

If a person applies for a license, COR, or MMD during the time between the minimum and maximum assessment periods, the OCMI will consider the conviction along with other factors in determining whether to grant the credential. Normally, a single prior conviction older than the minimum assessment period would not be disqualifying unless the OCMI is aware of offsetting factors. Offsetting factors include multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI may disapprove the application.

The maximum assessment periods in the tables will protect merchant mariners against arbitrary imposition of unreasonably long assessment periods. Following the maximum assessment period, the OCMI may not normally deny granting the license, COR or MMD. However, if an OCMI considered a prior criminal conviction older than the maximum assessment period in disapproving an application, then the OCMI would be required to inform the applicant, in writing, of the reasons for the decision, including the reasons why a conviction older than the maximum was still being considered. The OCMI would also be required to inform the applicant of the appeal procedures that apply.

The minimum assessment period for applicants with multiple convictions, whether at a single trial or separate trials, would be the longest minimum from among those listed in the tables for

the applicant's convictions. However, convictions of multiple offenses, whether at a single trial or separate trials, may be sufficient evidence that the applicant is not suitable for service in the merchant marine and may lead the OCMI to deny the application after the minimum assessment period and, in extraordinary cases, even after the maximum period in the tables has expired.

A mariner who already holds a license, COR, or MMD and who has been convicted of a drug offense(s) and who applies for reissue of that credential with a new expiration date including a renewal, raise of grade, or endorsement may have his or her application withheld. The OCMI will then take appropriate action under the marine investigation regulations for personnel actions which appear in 46 CFR part 5.

The Coast Guard solicits comments on the appropriateness of the criminal offense categories and assessment periods contained in Tables 10.201(h) and 12.02–4(c). The Coast Guard also solicits comments on the factors to be considered in determining suitability for service in the merchant marine contained in 10.201(j) and 12.12.02–4(e).

2. National Driver Register Access

The Oil Pollution Act of 1990 (Pub. L. 101–380) amended 46 U.S.C. 7101 and 7302 to prohibit issuance of merchant mariner's credentials unless applicants make available information from the NDR. The conference report states: ''The purpose of this section * * * is to ensure that the Coast Guard can identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs. Abuse of these substances may evince possible unsafe vessel operations, leading to additional accidents and oil spills.'' (House Conf. Rep. No. 101–653, p. 128). The Coast Guard proposes to amend 46 CFR parts 10 and 12 to require an applicant for a merchant mariner's credential to make available to the Coast Guard, at the time of making an application, the information identified in section 205(a)(3) (A) or (B) of the NDR Act concerning his or her driving record. The applicant would be required to submit a pre-printed written consent form to the Coast Guard along with the application package. The OCMI would obtain checks of the NDR. The OCMI would not issue a license, COR, or MMD until it had received and reviewed the NDR report.

The NDR report contains basic descriptive data about an individual, the current status of an individual's license to operate a motor vehicle, and an indication that a State may hold records regarding criminal or administrative action taken against an individual's license to operate a motor vehicle. The NDR report does not describe the substantive offense that forms the basis for a State's license action. The information required by section 205(a)(3) (A) or (B) of the NDR Act, in addition to covering conviction of motor vehicle offenses involving operation of a motor vehicle under the influence of or impaired by alcohol or a controlled substance, covers conviction of a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways. Each applicant will have an opportunity to review the NDR report and verify or refute any information in the report by obtaining appropriate State records. The OCMI will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

The holder of a merchant mariner's credential is closely involved with the safe operation of a vessel. Performance of many routine duties and all emergency duties affects the safety of the vessel. Unsafe performance of duties could produce catastrophic consequences. To help minimize the risk of unsafe operation, the Coast Guard may exclude from holding seafarer's credentials individuals who have demonstrated a lack of concern regarding the safety of themselves, others, or the marine environment. The amendments to 46 U.S.C. 7101 and 7302 reflect the conclusion that convictions of offenses listed in section 205(a)(3) (A) or (B) of the NDR Act may demonstrate such a lack of concern. Therefore, the OCMI will evaluate each NDR report to determine if there is evidence of a problem affecting the applicant's qualification to hold a merchant mariner credential.

The OCMI would use the following guidelines to evaluate applicants who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) or Table 12.02–04(d) as applicable.

a. Single NDR Listed Conviction

An NDR check disclosing a single conviction could indicate a recurring problem or an isolated incident. A single conviction may reveal the early stage of a developing long-term problem or it may mean that an individual having a well-developed problem was caught only once. It could also indicate a single incident in which poor judgment was exercised. In cases where a long-term problem is developing and corrective measures are not taken, additional time may result in subsequent convictions.

(1) Single NDR listed conviction-less than 1 year old. If the conviction is less than 1 year old, the application may be disapproved for a period of time sufficient to ensure that a subsequent incident does not occur (at least 1 year from the date of the conviction).

(2) Single NDR listed conviction—more than 1 but less than 3 years old. If the conviction is more than 1 year old, but less than 3 years old, the application would be processed unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

(3) Single NDR listed conviction—more than 3 years old. If the conviction is more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

b. Multiple NDR Listed Convictions

Multiple (two or more) drug or alcohol related NDR listed convictions may indicate a problem with alcohol or with the illegal use of drugs. They may also indicate uncontrolled dependency (alcoholism), drug addiction, or irresponsibility and dangerous disregard for the safety of self and others. The OCMI will not issue a merchant mariner's credential to an applicant with multiple convictions unless the applicant shows that he or she is now suitable for employment in the merchant marine and has no further convictions for a period of time. Acceptable evidence of suitability for employment in the merchant marine include the following, as appropriate to the particular case: completion of an alcohol or drug-abuse treatment or education program; active membership in a rehabilitation organization such as Alcoholics Anonymous; and character references from persons who can attest to the length of the applicant's current period of sobriety and applicant's reliability.

(1) Multiple NDR listed convictions—less than 3 years old. If an applicant has multiple convictions within the last 3 years, the application may be denied unless it has been at least 1 year from the date of the last conviction or at least 3 years from the date of the second most recent conviction, whichever is longer.

(2) Multiple NDR listed convictions—more than 3 years old. For an applicant with multiple convictions, the most recent being more than 3 years old, further evaluation would not be necessary unless a suspension or revocation of a driver's license is still in effect. If a suspension or revocation is still in effect, the OCMI would review the conviction resulting in that suspension or revocation before processing the application. The OCMI would not issue the credential until satisfied that the applicant was suitable for employment in the merchant marine.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed 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).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows.

1. Criminal Record Review

Coast Guard costs attributable to implementing the provisions authorizing the criminal record review of applicants for licenses, CORs, and MMDs in sections 4101(a) and 4102(e) of OPA 90 will be incurred by the RECs and Coast Guard Headquarters. These costs are associated with reviewing and processing the criminal record review data through the Federal Bureau of Investigation (FBI). The REC will assume the primary responsibility for the final review of the criminal record report received from the FBI.

Because current Coast Guard regulations and practices require all applicants for the original issuance of licenses, CORs, or MMDs to submit to criminal record reviews by the taking of fingerprints, these costs are not newly incurred as a result of this proposed rulemaking, and therefore, are not included in this regulatory assessment. The costs associated with the proposed requirements for criminal record reviews apply only to a raise in grade of a license or COR; an endorsement on a MMD with a new expiration date; or renewal of a license, COR or MMD. The Coast Guard plans to spot-check the criminal records of individuals applying for these merchant mariner credentials. For the purpose of estimating costs, the Coast Guard has assumed that 1 of every 30 of these applicants will be spot-checked.

Approximately 10,881 licenses are expected to be renewed each year. An estimated 363 (10,881/30) spot criminal record checks will be performed on these applicants.

Approximately 18,000 MMDs are expected to be renewed each year. An estimated 600 (18,000/30) spot criminal record checks will be done on these applicants.

Approximately 300 CORs are expected to be renewed each year. An estimated 10 (300/30) spot criminal record checks will be performed on these applicants.

Approximately 3,740 raises of grade for license and COR endorsements are expected to be issued each year. An estimated 125 (3,740/30) spot criminal record checks will be performed on these applicants.

Approximately 4,025 supplemental MMD endorsements are issued each year. An estimated 134 (4,025/30) spot criminal record checks will be done on these applicants.

The total number of spot criminal record checks will amount to approximately 1,232 (See Table I.).

TABLE I

Type of action	No. applicants	No. checked
License Renewal	10,881	363
MMD Renewals	18,000	600
COR Renewals	300	10
Raise of grade (licenses) and higher grade of COR	3,740	125
Supplemental endorsements (MMDs)	4,025	134
Total number of spot criminal record checks	.....	1,232

It will cost the Coast Guard approximately $16 per criminal record check to process the fingerprints through the FBI for an estimated annual cost of $19,700.

Based on a sample survey of the REC's experience with criminal records conducted by the Coast Guard in 1992, 8 percent of the applicants are estimated to have records with the FBI. Of those with records, it is estimated that 9 percent have records significant to the license evaluation. Thus, only .72 percent of the applicants had actionable convictions on their records. Therefore, of the reissue and renewal applicants sampled, it is estimated that 99 will have records with the FBI, and a total of 9 of the 1,232 applicants will have records significant to the license evaluation. The Coast Guard estimates that the costs for the 99 applicants with convictions to furnish the necessary documents to exonerate themselves will be minimal. Costs are expected to total approximately $19 per court record for aggregate annual respondent costs of approximately $1,900.

The Coast Guard estimates that 75 percent, or 924, of the spot-checked applicants for a raise in grade of a license or COR, a renewal of a license or COR, or any MMD with a new expiration date will apply by mail. For those 924 applicants, the estimated costs include the time for the applicant to go to his or her local police department, submit to fingerprinting, and return to his or her residence. The Coast Guard estimates that this would take approximately 1.5 hrs. of the applicant's time. Total respondent costs are estimated to be $22,700.

Twenty-five percent, or 308, of the spot-checked applicants are expected to choose to go to an REC to conduct their renewal transactions. For those 308 applicants, additional costs attributed to the criminal record check will be insignificant.

2. National Driver Register Access

The Coast Guard estimates that it will conduct 57,435 NDR checks annually for all individuals applying for the original issuance, renewal, or endorsement with a new expiration date of merchant mariner's credentials. The Coast Guard's costs for NDR checks involve providing an interface with the NDR computer and clerical resources to process record checks and notifications to applicants with NDR records. These costs are estimated to be $120,000 annually, with the potential for substantial reduction in cost if direct access to the NDR data by the RECs is authorized. The RECs will write letters to those applicants who have a probable identification (hit), and review any associated court records as forwarded by applicants.

The Coast Guard estimates that initial computer hardware and software costs and necessary connection to the NDR will be under $20,000. The Coast Guard estimates the annual cost of a dedicated telephone line from Coast Guard

Headquarters to the Commonwealth of Virginia will be $12,000 ($6/hr. x 8 hrs./day x 250 days/yr.). The initial annual Coast Guard REC costs are estimated to be $58,354 (57,435 checks x 0.05 hr./check x $20/hr. for a clerical employee, plus $0.32/stamp x 2,872 hits). Initially, the Coast Guard will dedicate one full-time clerical employee at Coast Guard Headquarters to forward data to the Commonwealth of Virginia for processing. This cost is estimated to be $40,000 ($20/hr. for a clerical employee x 8 hrs./day x 250 days). Therefore, the initial annual Coast Guard cost associated with the National Driver Register portion of the proposed rule is estimated to total approximately $111,400.

Annual respondent costs associated with NDR checks include the time to fill out the NDR consent form which is considered to be insignificant. In 50 percent of the 2,872 hits, or 1,436 cases, applicants will have clean driving records and the OCMI will issue their merchant mariner's credentials without further expense. For the other 50 percent of applicants, or 1,436, costs are expected to be less than $20.00 per court record submitted to the Coast Guard for estimated annual respondent costs of $26,700.

The dollar value of direct and societal benefits flowing from spot-checking applicants' criminal records and from reviewing applicants' NDR records are not quantifiable but may be substantial.

The Coast Guard anticipates that, as a result of this rule, a number of applicants will be identified, based upon their criminal record or adverse driving record, whose conduct indicates that they should not be trusted to safely perform shipboard duties. Those applicants will not be granted merchant mariner credentials.

Direct benefits would include the potential for—

- Fewer marine groundings and other accidents;
- Reduced property loss;
- Fewer releases of oil and hazardous materials into the marine environment; and
- Fewer injuries and reduced loss of life among merchant mariners.

The Coast Guard also anticipates several indirect benefits. Within the community of applicants for merchant mariner's credentials, knowledge of the Coast Guard's enhanced periodic record-checking program may dissuade recidivism among merchant mariners with past criminal, or serious traffic records. The program may also discourage some convicted criminals, dangerous drug users, and serious traffic offenders from seeking new credentials or renewals, and may also encourage some applicants who are convicted criminals or dangerous drug users to truthfully complete questions that address these issues on the application forms. Dangerous drug users in the U.S. merchant marine may be encouraged to seek counseling and treatment before incurring a criminal record or dangerous drug history with the FBI. In addition, merchant mariners and prospective merchant mariners may be encouraged to maintain a satisfactory standard of personal conduct.

Historical data is insufficient to quantify benefits; however, should this program manage to save even one life per year at $2.6 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its costs. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

1. Criminal Record Review

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.209, 10.805, 12.02–4, and 12.02–9. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0514.

Administration: U.S. Coast Guard.

Title: National Driver Register and Criminal Record Review in Issuing Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 gives the Coast Guard discretionary authority to review the criminal record of applicants for licenses, CORs, and MMDs. OPA 90 also gives the Coast Guard discretionary authority to review the criminal record of applicants for reissue of licences, CORs, or MMDs with new expiration dates, including renewals, raises of grade, or endorsements.

Proposed use of information: An applicant who has been convicted of a serious crime may be found unfit to serve as a merchant mariner on a vessel for safety reasons.

Frequency of Response: Whenever a person applies for an original license, COR, or MMD; or whenever a person applies for a raise in grade of a license or COR; an endorsement of an MMD with a new expiration date; or renewal of a license, COR, or MMD, and that person is selected for a criminal record check.

Burden Estimate: The Coast Guard estimates that the cost to the applicants would be approximately $19,700 per year for compliance with the criminal record review requirements of the proposed rule.

Respondents: The Coast Guard will spot-check the individual criminal records of applicants for reissue of licences, CORs, or MMDs with new expiration dates, including renewals, raises of grade, and endorsements. An estimated 36,946 individuals will apply for these merchant mariner's credentials. Every 30th applicant will be screened, which will result in a total of 1,232 criminal record spot-checks performed.

Form(s): FBI Fingerprint Card FD–258 (Revision 12–29–82).

Average Burden Hours per Respondent: Negligible for 308 respondents and 1.5 hrs. for 924 respondents.

2. National Driver Register Access

This proposal contains collection-of-information requirements in the following sections: §§ 10.201, 10.205, 10.207, 10.209, 10.805, 12.02–4, and 12.02–9. The following particulars apply:

DOT No: 2115.

OMB Control Number: 2115–0514.

Administration: U.S. Coast Guard.

Title: National Driver Register and Criminal Record Review in Issuing

Licenses, Certificates of Registry, or Merchant Mariner's Documents.

Need for Information: OPA 90 requires that the Coast Guard not issue a license, COR, or MMD to an applicant unless that individual makes available to the Coast Guard any information contained in the NDR. Information contained in the NDR may indicate that an individual is not suitable for employment in the merchant marine. This information must be made available to the applicant for review and written comment before the Coast Guard uses the information as a basis for denying, suspending, revoking, or taking other action against an individual's license, COR, or MMD.

Proposed Use of Information: The Coast Guard will use the information in the NDR to assist it in determining whether an applicant is suitable for maritime employment. Although an individual's motor vehicle record is not directly related to his or her maritime career, a record of alcohol or drug-related, or other specified motor vehicle offenses indicates that the individual may have a disregard for his or her own safety or the safety of others and therefore may not be suitable for maritime employment.

Frequency of Response: When an applicant applies for the original issuance or renewal of a license, COR, or MMD or raise in grade or endorsement of a license, COR, or MMD.

Burden Estimate: The Coast Guard estimates that costs to individuals and industry will be negligible. The Coast Guard expects to ask approximately 1,400 individuals to furnish court records to the Coast Guard for an estimated cost of $26,700.

Respondents: The Coast Guard estimates that 57,435 merchant mariners will be affected annually by this rulemaking.

Form(s): NDR Consent and Authorization Form.

Average Burden Hours Per Respondent: Negligible for initial check; 0.5 hrs. for persons with probable identifications.

The Coast Guard has submitted the requirement to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirement should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under 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 Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Paragraph 2.B.2.l of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

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

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7101, 7106, 7107, 7109, 7302, 7505, 7701; 49 CFR 1.46. Section 10.107 also issued under 44 U.S.C. 3507.

2. In § 10.103, the definitions of ''conviction'' and ''National Driver Register,'' are added to read as follows:

§ 10.103 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a license or certificate of registry has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). Conviction of more than one offense at a single trial will be considered to be multiple convictions. If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

* * * * *

3. In § 10.201, paragraph (b) is revised and paragraphs (h), (i), and (j) are added to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

* * * * *

(b) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for a license or certificate of registry, except as provided by the provisions of paragraph (h) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug is eligible for a license or certificate of registry unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (j) of this section.

* * * * *

(h) *Criminal record review.* The OCMI may review the criminal record of an applicant for the issuance of a license or certificate of registry issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If the applicant is advised that a criminal record check is required by the OCMI, applicants shall provide their fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if a criminal record review leads the OCMI to determine that the applicant's habits of life and character are such that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the reconsideration and appeal procedures in § 1.03 of this chapter

apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 10.201(h) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the OCMI will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 10.201(h) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 10.201(h) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a license or certificate of registry before the minimum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the applicant must provide evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (j) of this section. The OCMI will consider the applicant's evidence and may issue the license or certificate of registry in less than the listed minimum assessment period if the OCMI is satisfied that the applicant is suitable to hold the license or certificate of registry for which he or she has applied. If an applicant does not provide evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the OCMI.

(5) If a person with a criminal conviction applies for a license or certificate of registry during the time between the minimum and maximum assessment periods shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section, the OCMI will consider the conviction and, unless there are offsetting factors, may grant the applicant the license or certificate of registry for which he or she has applied. Offsetting factors include multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the OCMI considers the applicant unsuitable for service in the merchant marine at the time of application, the OCMI may disapprove the application.

(6) If a person with a criminal conviction applies for a license or certificate of registry after the maximum assessment period shown in Table 10.201(h) or established by the OCMI under paragraph (h)(2) of this section has elapsed, then the OCMI will grant the applicant the license or certificate of registry for which he or she has applied unless the OCMI has reason to believe the applicant is still unsuitable for service in the merchant marine. If the OCMI disapproves an application based upon a conviction older than the maximum assessment period, the OCMI will notify the applicant in writing of the reason(s) for the disapproval. The OCMI will also inform the applicant, in writing, that the reconsideration and appeal procedures contained in § 1.03 of this chapter apply.

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Robbery	5 years	10 years.
Other crimes against persons[2]		
Crimes Against Property		
Burglary	3 years	10 years.
Larceny (embezzlement)	3 years	5 years.
Other crimes against property[2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highways	1 year	2 years.
Other vehicular crimes[2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety[2]		

TABLE 10.201(h).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE CRIMINAL CONVICTIONS—Continued

Crime[1]	Assessment periods	
	Minimum	Maximum
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Criminal Violations of Environmental Laws		
Criminal violations of environmental laws involving improper handling of pollutants or hazardous materials	1 year	10 years.
Dangerous Drug Offenses[3 4]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions[5]		

[1] Conviction of attempt, solicitation, aiding and abetting, accessory after the fact, and conspiracy to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the OCMI to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable only to original applications for licenses or CORs. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section. Note: Applicants for reissue of a license or COR with a new expiration date including a renewal or a raise of grade, who have been convicted of a dangerous drug offense while holding a license or COR, may have their applications withheld until appropriate action has been completed by the OCMI under the regulations which appear in 46 CFR part 5 governing administrative actions against merchant mariner credentials.

[4] The assessment period shall not exceed 10 years from the date of conviction.

[5] Other dangerous drug convictions are to be reviewed by the OCMI on a case by case basis to determine the appropriate assessment periods depending on the nature of the offense.

(i) *National Driver Register.* A license or certificate of registry will not be issued as an original or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3) (A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The OCMI will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the OCMI to determine that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which the application is made. If an application is disapproved, the OCMI will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the OCMI will make the information available to the applicant for review and written comment. The applicant may submit records from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 10.201(i) will be used by the OCMI in evaluating applicants for licenses and certificates of registry who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the OCMI under Table 10.201(h) as applicable.

TABLE 10.201(i).—GUIDELINES FOR EVALUATING APPLICANTS FOR LICENSES AND CERTIFICATES OF REGISTRY WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL[1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (b) of this section.

(j) If an applicant has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the OCMI may consider the following factors, as applicable, in assessing the applicant's suitability to hold a license or certificate of registry. This list is intended as a guide for the OCMI. The OCMI may consider other factors which he or she judges appropriate to a particular applicant.

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics Anonymous or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

4. In § 10.205, paragraph (f)(2) is revised and paragraph (k) is added to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(f) * * *

(1) * * *

(2) The OCMI shall review the criminal record check of each applicant for an original license or certificate of registry according to the procedures set forth in 10.201(h).

* * * * *

(k) *National Driver Register.* Each applicant for an original license or certificate of registry shall consent to an NDR check under § 10.201(i).

5. In § 10.207, paragraphs (h) and (i) are added to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(h) *Criminal record review.* Each applicant for a raise of grade may be required to submit to a criminal record check under § 10.201(h).

(i) *National Driver Register.* Each applicant for a raise in grade of a license shall consent to an NDR check under § 10.201(i) if the license is reissued with a new expiration date.

6. In § 10.209, paragraphs (i) and (j) are added to read as follows:

§ 10.209 Requirements for the renewal of licenses and certificates of registry.

* * * * *

(i) Each applicant for a renewal may be required to consent to a criminal record check under § 10.201(h).

(j) Each applicant for renewal of a license or certificate of registry shall consent to an NDR check under § 10.201(i).

PART 12—CERTIFICATION OF SEAMEN

7. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

8. In § 12.01–6, the definitions of ''conviction'' and ''National Driver Register'' are added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia or any State or territory of the United States of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982 (23 U.S.C. 401 note). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forego appeal of a trial court finding, then the applicant will be considered to have received a conviction. A later expungement of the conviction will not be considered unless it is proved that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

National Driver Register (NDR) means the nationwide repository of information on drivers maintained by the National Highway Traffic Safety Administration as provided under 23 U.S.C. 401 note.

* * * * *

9. In § 12.02–4, paragraph (a) is revised, paragraph (b) is removed, paragraph (c) is redesignated as paragraph (b), and new paragraphs (c), (d) and (e) are added to read as follows:

§ 12.02–4 Basis for denial of documents.

(a) No person who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any State or territory of the United States is eligible for an original merchant mariner's document, except as provided by the provisions of paragraph (c) of this section. No person who has ever been the user of, or addicted to the use of, a dangerous drug is eligible for a merchant mariner's document unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

* * * * *

(c) *Criminal record review.* The Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for a merchant mariner's document issued as an original or reissued with a new expiration date. An applicant conducting simultaneous merchant mariner's credential transactions shall undergo only one criminal record check.

(1) If a criminal record check is required by the Officer in Charge, Marine Inspection, applicants shall provide fingerprints at the time of application. The fingerprints will be used to determine whether the applicant has a record of a criminal conviction. An application may be disapproved if the individual's criminal record leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal.

(2) The guidelines in Table 12.02–4(c) will be used by the Officer in Charge, Marine Inspection in evaluating applicants for merchant mariner's documents who have criminal convictions. The table lists major categories of criminal activity and is not to be construed as an all-inclusive list. If an applicant is convicted of an offense that does not appear on the list, the Officer in Charge, Marine Inspection will establish an appropriate assessment period using the list as a guide. Time incarcerated or on supervised probation or parole will not be considered as part of the assessment period. Convictions for drug offenses more than 10 years prior to the date of application will not be considered.

(3) When an applicant has convictions for more than one offense, the minimum assessment period will be the longest minimum in Table 12.02–4(c) based upon the applicant's convictions; the maximum assessment period will be the longest shown in Table 12.02–4(c) based upon the applicant's convictions.

(4) If a person with a criminal conviction applies for a merchant

mariner's document before the minimum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the applicant must provide, as part of the application package, evidence of suitability for service in the merchant marine. Factors which are evidence of suitability for service in the merchant marine are listed in paragraph (e) of this section. The Officer in Charge, Marine Inspection will consider the applicant's evidence submitted with the application and may issue the merchant mariner's document in less than the listed minimum assessment period if the Officer in Charge, Marine Inspection is satisfied that the applicant is suitable to hold the merchant mariner's document for which he or she has applied. If an application filed before the minimum assessment period has elapsed does not include evidence of suitability for service in the merchant marine, then the application will be considered incomplete and will not be processed by the Officer in Charge, Marine Inspection until the applicant provides the necessary evidence as set forth in paragraph (e) of this section.

(5) If a person with a criminal conviction applies for a merchant mariner's document during the time between the minimum and maximum assessment periods shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section, then the Officer in Charge, Marine Inspection shall consider the conviction and, unless there are offsetting factors, shall grant the applicant the merchant mariner's document for which he or she has applied. Offsetting factors include such factors as multiple convictions, failure to comply with court orders including child support orders, previous failures at rehabilitation or reform, inability to maintain steady employment, or any connection between the crime and the safe operation of a vessel. If the Officer in Charge, Marine Inspection considers the applicant unsuitable for service in the merchant marine at the time of application, the Officer in Charge, Marine Inspection may disapprove the application.

(6) If a person with a criminal conviction applies for a merchant mariner's document after the maximum assessment period shown in Table 12.02–4(c) or established by the Officer in Charge, Marine Inspection under paragraph (c)(2) of this section has elapsed, then the Officer in Charge, Marine Inspection will grant the applicant the merchant mariner's document for which he or she has applied unless the Officer in Charge, Marine Inspection considers the applicant still unsuitable for service in the merchant marine. If the Officer in Charge, Marine Inspection disapproves an applicant with a conviction older than the maximum assessment period listed in Table 12.02–4(c), the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for the disapproval including the Officer in Charge, Marine Inspection's reason(s) for considering a conviction older than the maximum assessment period listed in Table 12.02–4(c). The Officer in Charge, Marine Inspection will also inform the applicant, in writing, that the appeal procedures contained in § 1.03 of this chapter apply.

TABLE 12.02–4(c).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE CRIMINAL CONVICTIONS

Crime [1]	Assessment periods	
	Minimum	Maximum
Crimes Against Persons		
Homicide (intentional)	7 years	20 years.
Homicide (unintentional)	5 years	10 years.
Assault (aggravated)	5 years	10 years.
Assault (simple)	1 year	5 years.
Sexual Assault (rape, child molestation)	5 years	10 years.
Other crimes against persons [2]		
Vehicular Crimes		
Conviction involving fatality	1 year	5 years.
Reckless Driving	1 year	2 years.
Racing on the Highway	1 year	2 years.
Other vehicular crimes [2]		
Crimes Against Public Safety		
Destruction of Property	5 years	10 years.
Other crimes against public safety [2]		
Crimes Involving National Security		
Terrorism, Acts of Sabotage, Espionage and related offenses	7 years	20 years.
Dangerous Drug Offenses [3 4]		
Trafficking (sale, distribution, transfer)	5 years	10 years.
Dangerous drugs (Use or possession)	1 year	10 years.
Other dangerous drug convictions [5]		

[1] Conviction of attempts, solicitations, aiding and abetting, accessory after the fact, and conspiracies to commit the criminal conduct listed in this table carry the same minimum and maximum assessment periods provided in the table.

[2] Other crimes are to be reviewed by the Officer in Charge, Marine Inspection to determine the minimum and maximum assessment periods depending on the nature of the crime.

[3] Applicable to original applications only. Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section. Note: Applicants for reissue of a merchant mariner's document with a new expiration date including a renewal or additional endorsement(s), who have been convicted of a dangerous drug offense while holding a merchant mariner's document, may have their application withheld until appropriate action has been completed by the Officer in Charge, Marine Inspection under the regulations which appear in 46 CFR part 5 governing the administrative actions against merchant mariner credentials.

[4] The assessment period shall not exceed 10 years from the date of conviction.

[5] Other dangerous drug convictions are to be reviewed by the Officer in Charge, Marine Inspection on a case by case basis to determine the appropriate assessment period depending on the nature of the offense.

(d) *National Driver Register.* A merchant mariner's document will not be issued or reissued with a new expiration date unless the applicant consents to a check of the NDR for offenses described in section 205(a)(3)(A) or (B) of the NDR Act (i.e., operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; and any traffic violations arising in connection with a fatal traffic accident, reckless driving, or racing on the highways). The Officer in Charge, Marine Inspection will not consider NDR information that is more than 3 years old unless that information relates to the current suspension or revocation of the applicant's license to operate a motor vehicle. An applicant conducting simultaneous merchant mariner's credential transactions is subject to only one NDR check.

(1) Any application may be disapproved if information from the NDR check leads the Officer in Charge, Marine Inspection to determine that the applicant cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which the application is made. If an application is disapproved, the Officer in Charge, Marine Inspection will notify the applicant in writing of the reason(s) for disapproval and advise the applicant that the appeal procedures in § 1.03 of this chapter apply. No examination will be given or merchant mariner's document issued pending decision on appeal.

(2) Prior to disapproving an application because of information received from the NDR, the Officer in Charge, Marine Inspection will make the information available to the applicant for review and written comment. The applicant may submit reports from the applicable State concerning driving record and convictions to the Coast Guard Regional Examination Center (REC) processing the application. The REC will not process any application with NDR listed convictions unless the applicant produces the underlying State records.

(3) The guidelines in Table 12.02–4(d) will be used by the Officer in Charge, Marine Inspection when evaluating applicants for merchant mariner's documents who have drug or alcohol related NDR listed convictions. Non-drug or alcohol related NDR listed convictions will be evaluated by the Officer in Charge, Marine Inspection under Table 12.02–4(c) as applicable.

TABLE 12.02–4(d).—GUIDELINES FOR EVALUATING APPLICANTS FOR MERCHANT MARINER'S DOCUMENTS WHO HAVE NDR MOTOR VEHICLE CONVICTIONS INVOLVING DANGEROUS DRUGS OR ALCOHOL [1]

Number of convictions	Date of conviction	Assessment period
1	Less than 1 year	1 year from date of conviction.
1	More than 1, less than 3 years	Application will be processed, unless suspension or revocation is still in effect. Applicant will be advised that additional conviction(s) may jeopardize merchant mariner credentials.
1	More than 3 years old	Not necessary unless suspension or revocation is still in effect.
2 or more	Any less than 3 years old	1 year since last conviction and at least 3 years from 2nd most recent conviction (whichever is longer), unless suspension or revocation is still in effect.
2 or more	All more than 3 years old	Application will be processed unless suspension or revocation is still in effect.

[1] Any applicant who has ever been the user of, or addicted to the use of, a dangerous drug shall meet the requirements of paragraph (a) of this section.

(e) If an applicant for an original merchant mariner's document has one or more alcohol or dangerous drug related criminal or NDR listed convictions, or if the applicant applies before the minimum assessment period for his or her conviction has elapsed, the Officer in Charge, Marine Inspection may consider the following factors, as applicable, in assessing the applicant's suitability to hold a merchant mariner's document. This list is intended as a guideline. The Officer in Charge, Marine Inspection may consider other factors which he or she judges appropriate.

(1) Proof of completion of an alcohol- or drug-abuse treatment or education program.

(2) Active membership in a rehabilitation or counseling group, such as Alcoholics or Narcotics Anonymous.

(3) Character references from persons who can attest to the applicant's sobriety, reliability, and suitability for employment in the merchant marine.

(4) Steady employment.

(5) Successful completion of all conditions of parole or probation.

10. In § 12.02–9, paragraphs (g) and (h) are added to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(g) Each applicant for an original merchant mariner's document may be required to submit to a criminal record check as required by § 12.02–4(c).

(h) Each applicant for an original merchant mariner's document or a merchant mariner's document reissued with a new expiration date shall comply with the NDR requirements in § 12.02–4(d).

Dated: March 6, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–6033 Filed 3–10–95; 8:45 am]

BILLING CODE 4910–14–P

federal register

Monday
March 13, 1995

Part VIII

Department of Health and Human Services

Public Health Service

Grants for Centers of Excellence Bilingual and Bicultural Minority Pre-Faculty Fellowship Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Grants for Centers of Excellence (COE) Bilingual and Bicultural Minority Pre-Faculty Fellowship Program

AGENCY: Office of Minority Health, HHS.

ACTION: Notice of availability of funds and requests for applications.

This demonstration program is to assess whether formal pre-faculty development programs will increase underrepresented minorities in faculty positions in health professions schools for the purpose of incorporating linguistic and culturally appropriate curriculum models.

AUTHORITY: This program will be conducted under the authority of section 1707 of the Public Health Service Act, as amended in Public Law 101–527.

AVAILABILITY OF FUNDS: A total of $650,000 is available for awards in FY 1995. It is projected that institutional awards of up to $50,000 per fellow will be available to support up to 13 fellows per 12-month budget period. Each institution may request up to two fellows for the 2-year project period; the fellows are to be appointed for 2 years. Grant funds may be used for stipend, tuition, fees, and travel, inclusive of indirect costs.

OBJECTIVE: To increase the number of minority faculty in health professions schools and the number of linguistically and culturally competent health professionals to provide care to targeted minority populations.

BACKGROUND: The ability of health care providers to deliver services in a manner which is both linguistically and culturally appropriate to diverse minority populations is critical to achieving equity of access to health care. Institutions of higher education, especially in the health professions, are pivotal in preparing and training future health care providers in the acquisition of appropriate cultural and linguistic skills to serve diverse minority populations.

Data indicate a shortage of full-time faculty from underrepresented minority groups in health professions schools. About 4 percent of U.S. medical school faculty in 1992 (excluding those at six predominantly minority schools) were from underrepresented minority backgrounds. Of those, 2.0 percent were African-American, 2.2 percent were Hispanic, and 0.1 percent were Native American. The underrepresentation of Asian and Pacific Islander subgroups on faculties is similarly acute. The data for schools of medicare are quite similar to schools of dentistry, pharmacy and other health professions schools.

Coupled with the paucity of underrepresented minorities on the faculty of health professions schools are the barriers faced by underrepresented minorities to receiving tenured appointments or decisionmaking positions in either the clinical or basic science arenas. Lack of opportunity to engage in meaningful research, develop teaching competence, engage in effective community service and secure the required publications for advancement are among those barriers. Others include misunderstandings regarding what is required of them, limited mentor guidance needed to surmount the politics of academia, and lack of protected time resulting in over-involvement with minority student problems and excessive committee assignments as a ''minority representative.'' Most significant is the dearth of formal faculty development programs within the health professions schools designed to optimize achievement of junior minority faculty.

Major universities and colleges indicate that institutional barriers exist to the recruitment, training and retention of junior minority faculty. Moreover, one of the critical opportunities for intervention in this process is after individuals have completed their professional preparation (e.g., Dental School, Medical Specialty Residency, etc.) and before they qualify as candidates for an entry level junior faculty position.

This obstacle can be overcome by maximizing retention potential for academic careers during this interim period through the offering of Faculty Development Fellowships. Such fellowships would be designed to help junior minority faculty improve their competence in the following areas: Research methodology, development of research grant proposals, ability to work with diverse minority populations, teaching capabilities, and writing and publication skills. These Faculty Development Fellowships would provide the preparation necessary for minorities to qualify for faculty appointments and possibly prevent them from leaving their academic careers.

Appreciation and understanding of the language and culture of minority communities are critical to effectively providing health care. Increased numbers of linguistic and culturally competent minority faculty in health professions schools could significantly assist in addressing these issues with respect to minority as well as majority health care providers. One promising means of attracting greater numbers of minorities into academic careers is through Faculty Development Fellowships. Through such fellowships, retention in the academic arena would be enhanced and research into minority health problems and the implications of linguistic and cultural barriers on the health of minority populations would be expanded.

This is an innovative program which will maximize the academic career potential of minority individuals who have completed their health professions preparation but are not yet competitive as candidates for ''new'' junior faculty positions. This will be accomplished by preparing such individuals for faculty appointments (tenure track or equivalent) in a manner that assures sound academic careers; and by developing them in linguistically and culturally appropriate competencies relevant to targeted minority populations. Ultimately, this program will provide for an increase in the number of minority faculty in health professions schools and the number of linguistically and culturally competent health professionals to provide care to targeted minority populations.

ELIGIBILITY: Only centers of Excellence (COEs) grantees currently funded under section 739 of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, are eligible to apply. The COEs are entities in the health professions schools known to have the capacity to comprehensively address health related language and cultural issues among targeted minority populations both within the academic setting and in the community. Further, the administrative unit, including program staff, and institutional infrastructure is already in place and funded through the COE grant to execute the initiative. Applications will not be accepted from any other organizations.

PROJECT REQUIREMENTS: Each project funded under this grant program is expected to meet the project requirements listed below:

1. Select Fellows: Identify and recruit individuals who meet the following criteria for fellows:

(A) Be a citizen of the United States, a noncitizen national, or a foreign national having in his or her possession a visa (or green card) permitting permanent residence in the United States;

(B) Meet the definition for underrepresented minority;

(C) Have completed a doctoral level degree in a relevant science in a school accredited by a body or bodies approved by the Secretary of Education; and

(D) Plan to complete the grant-supported program and follow an academic career in a health professions school.

2. Prepare Fellows for Faculty Appointments: The health professions school pre-faculty development preparation program must be a year-round formal fellowship program not to exceed a period of 2 years. To prepare fellows for faculty appointments, the fellowship program should include at least the following: Enhancement of discipline specific competencies; preparation in the areas of education and pedagogical skills, academic leadership, research and research methodology, research grant preparation/acquisition, administration, and writing for publication, and community service.

3. Develop Linguistic and Culturally Appropriate Competencies: The fellowship program should seek to enhance the fellow's own cultural competence through delivery of services to minorities that necessitates focus on linguistic and cultural health delivery issues and approaches. Additional activities would involve but would not be limited to the following: Conduct of research in selected priority areas of minority health and into the implications of language and cultural issues on the health of minority populations; initiation of programs designed to increase the numbers and types of health care providers trained to serve limited English-speaking populations; and involvement in the training of health care providers in cultural competency.

4. Provide a Mentor: Identify a senior tenured faculty member who will provide direct supervision of the fellow and formal ongoing mentoring (transfer of knowledge, skills and abilities) relevant to advancement in an academic health profession setting.

5. Engage the Fellows in Research: As part of their preparation, fellows must be engaged in research regarding the recognition of language and cultural barriers to the provision of health care, including services to limited-English-speaking populations and development of language and culture curriculum models for health professions schools.

6. Appoint Fellows to Junior Faculty Positions: The institution must make a commitment to appoint fellows as junior faculty members upon successful completion of the fellowship program and assure salary for at least 2 years beyond the fellowship.

DEFINITIONS: For purposes of this grant program the following definitions apply:

- *Bilingual and Bicultural*—a person who has a broad knowledge of two languages and the cultures in which they are spoken and is able to communicate and deliver the message in the language and cultural context in which they are spoken.
- *Cultural Competency*—a set of academic and interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among, and between groups. This requires a willingness and ability to draw on community-based values, traditions, and customs and to work with knowledgeable persons of and from the community in developing focused interventions, communications, and other supports.
- *Health Professions Schools*—schools of allopathic or osteopathic medicine, dentistry and pharmacy.
- *Limited English-speaking*—individual whose primary language is other than English and who must communicate in that language if the individual is to have an equal opportunity to participate effectively in and benefit from aid, service or benefit provided.
- *Pre-Faculty Development Program*—a formal, systematic training program to develop the knowledge, skills and abilities necessary to be competitive for junior faculty tenured or equivalent positions.
- *Stipend*—a payment made to an individual under a fellowship or training grant in accordance with preestablished levels to provide for the individual's living expenses during the period of training.
- *Underrepresented minority*—with respect to a health profession, racial and ethnic populations that are underrepresented in the health professions relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, and Native Americans including Native Hawaiians and potentially various subpopulations of Asian and Pacific Islander individuals. Applicants must provide evidence that any particular subgroup of Asian and Pacific Islander individuals is underrepresented in a specific discipline.

NATIONAL HEALTH OBJECTIVES FOR THE YEAR 2000: The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program is related to the objectives of improving access to and availability of primary care services for all Americans, especially the underserved populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

SMOKE-FREE WORKPLACE: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

AWARD CRITERIA: Funding decisions will be determined by the Office of Minority Health and will be based on the recommendations/ratings of review panels, program balance, including geographic and race/ethnicity distribution, and health problem area.

REVIEW CRITERIA: The following are criteria for review of applications for this program:

1. The degree to which the proposed project plan meets the project requirements.
2. The degree to which the senior faculty are committed to and involved in the training of the fellows:
3. The extent to which the project systematically evaluates the administration of the program and the degree to which program and educational objectives are met.
4. The administrative, management, and resource capability of the applicant to carry-out the proposed project in a cost-effective manner.
5. The potential for the applicant to continue the program without Federal support after completion of the approved project period.

APPLICATION REQUESTS: Application form PHS 6025–1 will be mailed to currently funded COE grantees. Questions regarding grants policy and business management issues should be directed to: Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000 (10th Floor), 5515 Security Lane, Rockville, MD 20852, Telephone: (301) 594–0758 FAX: (301) 443–8280. Completed applications should be submitted to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact: Ms. Hazel R. Farrar, Program Analyst, Division of Program Coordination, Office of Minority Health, Rockwall II Building, Suite 1000 (10th Floor), 5515 Security Lane, Rockville, MD 20852, Telephone: (301) 594–0769, Fax: (301) 443–8280.

REVIEW OF APPLICATIONS: Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive or nonconforming will be returned without comment. Applications judged to be complete, conforming, and responsive will be reviewed for technical merit in accordance with PHS policies.

Applications will be evaluated by Federal reviewers. Applicants are advised to pay close attention to program guidelines, and the general and supplemental instructions provided in the application kit.

The deadline date for receipt of applications is (enter 30 days from date of publication). Applications will be considered to be ''on time'' if they are either:

(1) *Received at the above address on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain 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 will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100) and is not subject to the Public Health System Reporting Requirements.

There is no CFDA number for this program since it is viewed as a one-time project.

Dated: February 22, 1995.

Clay E. Simpson, Jr.,

Acting Deputy Assistant Secretary for Minority Health.

[FR Doc. 95–6082 Filed 3–10–95; 8:45 am]

BILLING CODE 4160–15–M

federal register

Monday
March 13, 1995

Part IX

Department of Education

Fund for the Improvement of Education: Partnerships in Character Education Pilot Project; Notice Inviting Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.215V]

Fund for the Improvement of Education: Partnerships in Character Education Pilot Project; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support pilot projects for character education as a way to address the broader FIE objectives.

Eligible Applicants: Only State educational agencies, in partnership with one or more local educational agencies, may apply for grants under this program.

Deadline for Transmittal of Applications: April 28, 1995.

Applications Available: March 14, 1995.

Estimated Available Funds: $750,000.

Estimated Range of Awards: $200,000–$250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $250,000 for the first 12-month budget period.

Project Period: Up to 48 months.

Supplementary Information: Under the Character Education program, State educational agencies provide technical and professional assistance to local educational agencies in the development and implementation of curriculum materials, teacher training, and other activities related to character education. Applicants requesting funds under this program must propose projects designed to develop character education programs that incorporate the following elements of character:

(a) Caring.
(b) Civic virtue and citizenship.
(c) Justice and fairness.
(d) Respect.
(e) Responsibility.
(f) Trustworthiness.
(g) Any other elements deemed appropriate by the members of the partnership.

Invitational Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in projects that will also include additional elements of character identified by the local educational agencies in consultation with the schools and communities that will participate in the project. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 75, 77, 80, 81, 82, 85, and 86, and (b) the regulations in 34 CFR Parts 98 and 99.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

Note: Projects requesting funding under this program must be designed so that the effectiveness of the programs, projects and activities that will be conducted is readily ascertainable.

To Request an Application: Voice Mail: 202–219–2053; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW, Washington, DC 20208–5645. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950, or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 8003.

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

[FR Doc. 95–6135 Filed 3–10–95; 8:45 am]

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federal register

Monday
March 13, 1995

Part X

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 328

Over-the-Counter Drug Products Intended for Oral Ingestion That Contain Alcohol; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 328

[Docket No. 93N–0107]

Over-the-Counter Drug Products Intended for Oral Ingestion that Contain Alcohol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing a maximum concentration limit for alcohol (ethyl alcohol) as an inactive ingredient in over-the-counter (OTC) drug products intended for oral ingestion (0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over). This final rule also requires that the alcohol content be stated prominently and conspicuously on the principal display (front) panel of product labeling. FDA is issuing this final rule after considering recommendations from its Nonprescription Drugs Advisory Committee (NDAC) and public comments on the agency's notice of proposed rulemaking. This final rule defers action on alcohol limits for Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested OTC homeopathic drug products.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54466), the agency proposed maximum concentration limits for alcohol as an inactive ingredient in OTC drug products intended for oral ingestion. The proposed limits were 0.5 percent alcohol for children under 6 years of age, 5 percent alcohol for children 6 to under 12 years of age, and 10 percent alcohol for anyone 12 years of age and over. In addition, the agency proposed that the alcohol content be stated prominently and conspicuously on the principal display (front) panel of product labeling, and that the labeling term ''alcohol-free'' mean that the product contains no alcohol at all. These proposals were based on NDAC's recommendations.

In response to the proposal, seven drug manufacturers, four professional organizations, four drug manufacturers associations, and two consumers submitted comments. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

I. The Agency's Conclusions on the Comments

A. General Comments

1. Several comments expressed their support for the alcohol content limitations proposed by the agency and placement of the alcohol content on the front (principal) display panel. The comments stated that prominent and conspicuous labeling will enhance and guide the public in making an informed decision when purchasing products.

2. Two comments urged FDA and industry to find alternatives to alcohol so that eventually alcohol can be eliminated from OTC drug products entirely. One comment, from a manufacturer of nonalcoholic OTC drug products, suggested that the agency codify its policy of encouragement of the lowest amount of alcohol necessary for pharmaceutical purposes. The comment stated that this could be done by amending proposed § 328.10 to include new paragraph (f) as follows:

(f) Any manufacturer of OTC drug products shall use, within reasonable time of it becoming known, any formulary technique or technology commercially available at adoption of this rule or which may later become available and would optimally reduce or eliminate the use of alcohol in its OTC product(s).

The agency appreciates the comments' concerns and strongly encourages the further development of safe alternatives to alcohol. However, the agency believes that it is unnecessary to codify its policy of ''encouragement,'' as suggested by one comment. The agency's statements in the preamble to the proposal and the agency's action in implementing alcohol concentration limits adequately reflect the agency's policy to reduce the amount of alcohol in OTC drug products.

3. One comment requested that FDA adopt a timetable for implementation of the new alcohol content limitations for orally ingested OTC drug products that is consistent with the timetable in the voluntary program proposed by the Nonprescription Drugs Manufacturers Association (NDMA). That program calls for NDMA member companies with affected products to implement the new limitations ''as soon as practicable.'' The goal for reformulating and labeling the 5- and 10-percent alcohol limitations was November 1993. The goal for reformulating and labeling of alcohol-free OTC drug products was December 1994. Both dates were for factory shipment of reformulated products.

The agency stated in its proposed rule (58 FR 54466) that the final rule would become effective 12 months after the date of its publication in the **Federal Register**. Thus, the effective date for implementing this final rule will go beyond the December 1994 date proposed by NDMA to complete the implementation of its voluntary program and should present no problems timewise to NDMA member companies.

4. One comment contended that the alcohol content regulation should pertain solely to orally ingested products covered by OTC drug monographs. The comment stated that OTC drug monographs represent a menu of ingredients that represent an essentially known set of products from a formulation standpoint, while OTC drug products under new drug applications (NDA's) usually represent novel OTC formulations that may require special considerations regarding product specifications. The comment added that formulatory flexibility is especially needed in the future for prescription-to-OTC switch products under NDA's.

The agency disagrees with the comment. The intent of the regulation is to limit the alcohol content of all OTC drug products intended for oral ingestion, regardless whether marketed under an OTC drug monograph(s) or an NDA (which also includes abbreviated applications). The regulation provides an exemption procedure in § 328.10(e). Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented. This procedure applies equally to products marketed under an OTC drug monograph(s) or an NDA. Therefore, the agency finds no basis to limit the regulation solely to products covered by OTC drug monographs.

5. One comment asserted that the proposed rule should be withdrawn because there are no data to support a 10-percent alcohol limit for orally ingested OTC drug products intended for adults. The comment contended that the 10-percent maximum alcohol concentration for adults was based solely on scientific opinion, but without scientific data to support the opinion. The comment argued that requiring

manufacturers to apply for an exemption to exceed the 10-percent alcohol content limit is unwarranted because the agency has not shown that such products are dangerous.

The agency disagrees with the comment. A number of safety issues related to higher alcohol concentrations were discussed at the NDAC meeting held on December 17, 1992. NDAC discussed development of lactic acidosis (with hypoglycemia occurring in some people) in acute alcohol intoxication, sensitivity and tolerance to alcohol, cutaneous vasodilation, withdrawal syndrome, fetal alcohol syndrome, interaction with drugs, etc. (See 58 FR 54466 at 54467 to 54468.) NDAC considered that alcohol displays zero order pharmacokinetics once a threshold concentration is exceeded. This means that blood alcohol concentrations are not proportional to the amount ingested. Thus, a small increase in the amount ingested may lead to a large increase in the blood alcohol concentration. It therefore is much easier to attain intoxicating blood levels of alcohol, because less alcohol needs to be ingested to do so.

The agency believes that there are sufficient scientific data to support the 10-percent alcohol limit for orally ingested OTC drug products intended for adults and that the petition procedure in § 328.10(e) is appropriate if there is a need to request an exemption.

6. One comment claimed that requiring child-resistant (CR) packaging would be more helpful in preventing accidental overdose in children than the alcohol content limitations proposed by the agency. The comment noted that the Consumer Product Safety Commission (CPSC) is currently considering development of a regulation to require CR packaging for mouthwashes containing greater than five percent alcohol. The comment mentioned that in response to the continuing problem of tampering with OTC drug products formulated as two-piece hard gelatin capsules, FDA had not proposed to simply ban gelatin capsules but rather ''balanced the value of the hard capsule dosage form to consumers against its continued vulnerability to malicious tampering'' and proposed to strengthen its tamper-resistant packaging regulation (59 FR 2542 at 2543, January 18, 1994).

The agency believes that CR packaging could play a role in preventing toxic effects in infants and young children from accidental ingestion of alcohol-containing OTC drug products. However, CR packaging alone would not prevent adolescents and adults from intentionally ingesting OTC drug products for their alcohol content or prevent young children and adolescents from ingesting undesirable levels of alcohol from normal doses of alcohol-containing OTC drug products. Because prevention of accidental overdose in children is not the primary purpose of this regulation, the agency is finalizing the regulation as proposed.

The agency discussed the issue of CR packaging in the OTC cough-cold combinations tentative final monograph (53 FR 30522 at 30527, August 12, 1988), and stated that the authority to require CR packaging rests with the CPSC under the Poison Prevention Packaging Act of 1970. FDA is aware that the CPSC has published a proposed rule (59 FR 24386, May 11, 1994) to require CR packaging for mouthwash products containing 3 grams (g) or more of alcohol. FDA is not aware of any CPSC consideration of CR packaging for alcohol-containing OTC drug products intended for oral ingestion.

7. One comment questioned why small amounts of alcohol ingested in OTC drug products are considered harmful when one to two ounces (oz) of alcohol per day are recommended for cardiovascular health in adults.

The agency acknowledges that small amounts of alcohol are not harmful for most adults. However, for some people even small amounts of alcohol could be harmful (see section I.A., comments 5 and 6). Those individuals will avoid alcoholic beverages but may not avoid OTC drug products because of unawareness of their alcohol content. The agency concludes that the potential benefit alcohol may have for cardiovascular health in some adults does not justify the unnecessary use of alcohol in OTC drug products, when this use may be harmful to some individuals.

8. One comment contended that eliminating alcohol from products intended for use by children and younger adolescents will not entirely address the problem posed by adolescents who purchase OTC drug products intended for use by adults in order to obtain psychoactive effects from the alcohol.

The agency acknowledges that the final regulation will not entirely eliminate the potential for adults and adolescents intentionally to misuse OTC drug products for their alcohol content. The prevention of intentional misuse, however, is not the primary consideration of this regulation. However, by reducing the amount of alcohol that can be consumed from OTC drug products, the agency believes that this regulation will discourage and reduce intentional misuse.

9. One comment requested that the agency have NDAC review the safety of synthetic alcohols (glycols) as a phase II followup to its initial ''alcohol'' work.

The agency notes that the comment offered no data or reasons to support its request. The agency is not aware of any current safety problems surrounding the use of glycols as inactive ingredients in OTC drug products that would warrant review at this time.

B. Comments on Labeling of OTC Drug Products Intended for Oral Ingestion that Contain Alcohol

10. Two comments objected to the requirement in proposed § 328.50(b) that the product's alcohol content appear on the principal display panel (PDP). The comments indicated that the PDP is for the purpose of product recognition and was not designed to carry all important information about safe product use, contending that the product information panel (PIP) was intended to provide this information. The comments stated that section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)) allows the alcohol content to appear anywhere on the OTC label. The comments mentioned that it has been industry practice to place the alcohol content in the PIP under the inactive ingredients section. The comments indicated that when consumers question product content, they logically turn to the ingredient listing on the PIP. The comments added that alcohol content information on the PDP would overemphasize and detract from the PIP. One comment argued that including an alcohol content statement would inevitably decrease the ''conspicuousness'' and prominence of other language currently required on the PDP. The other comment argued that it is important to use the PDP for its specialized marketing purposes (product recognition, e.g., product name, statement of identity, and net contents) and to use the PIP for consistent consumer usage of OTC drug labeling (e.g., ingredients, warnings, and directions) for all the various OTC drug categories. The comment added that a low alcohol content is not of any greater importance than other warnings currently required on OTC drug products intended for oral ingestion. The comment mentioned that consumers with a personal interest in the product's alcohol content will be self-motivated to read the PIP for the disclosed alcohol content. The comments noted that a number of other related important warnings (e.g., the aspartame warning for phenylketonurics on food products, the sodium content

warnings, and the FD&C Yellow No. 5 warnings in 21 CFR 201.20 for certain drugs) are not required to appear on the PDP, but may appear on the PIP.

One comment also stated that there is no demonstrable evidence of a serious public health hazard resulting from the presence of alcohol in OTC drug products. The comment argued that the use of the PDP to disclose alcohol content would create, by regulation, a negative perception of alcohol, which is unwarranted scientifically. The comment concluded that no data are available to suggest that the current labeling regulations are ineffective in informing consumers who want to know the alcohol content of OTC drug products.

The agency disagrees with the comments. While no specific data are available to demonstrate consumer confusion, the agency believes consumers need to be able to readily determine the alcohol content of OTC drug products at the time of purchase. The agency is aware that consumers do not necessarily read all labeling at the time of purchase. Prominent and conspicuous labeling of the alcohol content on the PDP will help consumers to make an informed decision at the time of purchase. This information is extremely important for consumers who wish to avoid or limit alcohol ingestion, such as a recovering alcoholic or a parent of a young child. The agency acknowledges that the act allows the alcohol content of a product to appear anywhere on the OTC label. However, the agency believes that the new alcohol labeling requirements should prove more effective in bringing this information to consumers' attention. The agency concludes that a few words describing the alcohol content (e.g., ''contains 5% alcohol,'' ''5% alcohol'') on the PDP would not significantly decrease label readability or alter the prominence of additional information currently required on the PDP. At this time, many manufacturers already voluntarily include related labeling to inform consumers that a product is ''alcohol free.'' To facilitate product comparison and to better provide consumers with information needed to make an informed decision, the agency is requiring a product's alcohol content to appear on the PDP. The agency is not aware of any significant safety problems with other inactive ingredients in OTC drug products that would warrant information about the ingredients on the PDP.

11. One comment expressed support for the agency's proposal that allows use of the term ''alcohol free'' only on those OTC drug products that contain no alcohol. Two comments objected to the proposal in § 328.50(e) that the term ''alcohol free'' mean zero percent alcohol. The comments requested that a de minimus level of alcohol be allowed in OTC drug products in order to permit some variability in the sensitivity of the methods of analysis and detection, especially due to the presence of alcohol moieties from natural flavors that are often used in OTC drug products. One comment argued that, due to the practicalities of pharmaceutical formulation, a de minimus level of 0.5 percent alcohol being labeled as ''alcohol free'' would allow manufacturers to use available alcohol-containing flavors in OTC drug formulations to provide essentially ''alcohol-free'' palatable formulations to consumers who want to avoid alcohol. The comment indicated that the terms ''sugar free'' (≤ 0.5 g), ''sodium free'' (≤ 5 mg), and ''fat free'' (≤ 0.5 g), may be applied to dietary supplements and foods (21 CFR 101.60(c)(1), 101.61(b)(1), and 101.62(b)(1)). The comment contended that this precedent acknowledges that a total absence of these components from certain foods is unlikely and difficult to achieve from the standpoint of product preparation. The comment concluded that this approach should carry over to an alcohol-free claim for OTC drug products.

The agency disagrees with the comments and believes that the term ''alcohol free'' should mean no (0 percent) alcohol in a product. The agency acknowledges that the total elimination of certain food components (fat, sugar, sodium) from foods is unlikely and difficult to achieve. Small amounts of these components, when present in foods, are dietarily insignificant. However, the agency believes that these circumstances do not apply to alcohol in OTC drug products.

Restricting use of the term ''alcohol free'' to products that contain no (0 percent) alcohol within the limits of current technology (Ref. 1) in no way limits manufacturers' ability to produce low alcohol OTC drug products. However, it does provide important and truthful labeling to consumers who may be interested in total avoidance of alcohol for personal, religious, or medical reasons. Consumers who want to purchase a product with no alcohol should be assured that the product does, in fact, contain no alcohol. Individuals taking an alcohol-deterrent medication, such as disulfiram, could suffer untoward reactions from ingesting a drug product labeled as ''alcohol free'' when it actually contains a small amount of alcohol (even up to 0.5 percent). Alcohol free products can be achieved, because a significant number of OTC drug products have already been reformulated with no alcohol. Therefore, the agency is finalizing § 328.50(e) as proposed.

The agency will use a gas-liquid chromatographic method (Ref. 1) to analyze products for their alcohol content. A copy of this method has been placed in the Dockets Management Branch (address above). The agency invites comments on this test method.

Reference

(1) Santos, J., ''Limit of Alcohol Test,'' draft of unpublished procedure, in OTC Vol. 260002, Docket No. 93N–0107, Dockets Management Branch.

12. One comment requested that the agency phase in the labeling requirements as they apply to homeopathic drug products over a period of 3 years. The comment contended that changing the labels on such a large number of preparations would require tremendous effort and expense. The comment added that this relabeling could not reasonably be achieved within the proposed 12-month period. Another comment complained that the agency is allowing manufacturers only 1 year to reformulate their products when it is impossible to achieve and prove a stable product formula in less than 3 years. The comment added that there may be no studies on the safety of increasing the amounts of alternative preservatives, while alcohol has a long history of safety.

The agency disagrees with the comments and finds no basis to grant a 3-year phase in period for this regulation. The comments offered no documentation to support that 3 years is necessary for product reformulation or relabeling. The agency feels that 1 year from the date of the final rule is sufficient for manufacturers to reformulate and relabel their products. One year has been the standard time provided for reformulation and relabeling throughout most of the OTC drug review. This timeframe has proven satisfactory for the vast majority of reformulations and relabelings that have resulted from the OTC drug review. Relabeling needed for homeopathic drug products to label the alcohol content on the principal display panel can be accomplished by the use of ''stick-on'' labels, if necessary.

The agency recognizes that manufacturers have already had 1 year since the proposal was published to conduct stability studies on products that will need to be reformulated. They will have 1 more year to complete these

studies before this final rule becomes effective. Further, manufacturers may request an extension for either relabeling or reformulating their products provided that they can justify and document their need.

C. Comments on Specific OTC Drug Products Containing Alcohol

13. One comment questioned whether the proposed regulations are intended to apply to homeopathic drug products. The comment noted that the preamble of the proposed rule stated that ''these regulations would apply to OTC drug products regulated under the monograph system (21 CFR parts 330 to 358), and those approved under new drug applications'' (58 FR 54466 at 54469). Referring to Compliance Policy Guide 7132.15 (homeopathic drugs) (Ref. 1) and the **Federal Register** announcement excluding OTC homeopathic drug products from the OTC drug review (37 FR 9464 at 9466, May 11, 1972), the comment mentioned that homeopathic drug products are not regulated under OTC drug monographs, nor are they subject to NDAs. The comment requested the agency to clarify this ambiguity.

The discussion in the preamble of the proposed rule about products regulated under the monograph system and NDA's was an illustrative example following a general statement that alcohol limitations and related labeling requirements apply to all OTC drug products intended for oral ingestion. It was the agency's intent that the proposed regulation apply to all drugs sold without a prescription. While homeopathic drugs are neither regulated under the monograph system nor subject to NDA's, they are still regulated as drugs under the act. The safety considerations surrounding alcohol apply equally to all OTC drug products. Accordingly, homeopathic drug products are subject to the final regulation and must meet all of the labeling requirements in § 328.50. However, because the regulation may conflict with alcohol content specifications set forth in the Homeopathic Pharmacopeia of the United States (see section I.C., comment 15), the agency is temporarily exempting orally ingested homeopathic drug products from the alcohol percentage limitations in § 328.10(b), (c), and (d) until this issue is resolved.

Reference

(1) FDA, Compliance Policy Guide 7132.15, May 31, 1988, copy in OTC Vol. 260002, Docket No. 93N–0107, Dockets Management Branch.

14. Two comments stated that the proposed regulation conflicts with the alcohol content specifications set forth in the Homeopathic Pharmacopoeia of the United States. Several comments argued that for solubility, stability, and preservative purposes, there is no substitute for alcohol in homeopathic drug products. Three of the comments added that alcohol is also essential in aiding the absorption of homeopathic medicines. The comments stated that ''if dilutions containing preservatives other than alcohol are used by a process of alternate serial dilution and dynaminization to prepare higher potencies, for example using a 3X formula to make a 6X, the preservatives would be potentized as well as the remedy in the homeopathic manner.'' The comments added that the physiological activity of homeopathically potentized preservatives is unknown and unpredictable, and no data exist to assist the homeopathic community in predicting the therapeutic effect on the user. Two comments mentioned that chemical preservatives have been identified increasingly as a source of undesired side effects, including allergies. One comment stated that the proposed alcohol restrictions would mean giving up all of the pharmaceutical, technical, and medical experience for homeopathic drug products. Another comment claimed that a therapeutic re-evaluation of homeopathic remedies would be necessary. Several comments claimed that alcohol in homeopathic drug products does not pose a risk to adults or children because of the small volume of alcohol present in a standard homeopathic drug dose (standard adult dose is generally 10 drops, 5 drops for children, approximately .25 to .5 mL) and the small package volume of alcohol containing homeopathic drug products (usually ≤ 4 oz). One comment stated that because the proposed alcohol content labeling focuses on percent alcohol content rather than total alcohol content per dose, consumers will avoid homeopathic drug products on the mistaken assumption that a high percent alcohol content reflects a high level of alcohol intake. Several comments asserted that the new regulation would have a significant ''negative'' economic impact on the homeopathic industry. The comments stated that a full-line homeopathic drug manufacturer makes dosage forms using over 1,000 active ingredients, and to reformulate, test, repackage, and relabel all homeopathic drug products would be very costly and time consuming. Further, having to apply for an exemption for each individual dosage form would be impracticable, time-consuming, and expensive for both manufacturers and FDA. Two comments asserted that subjecting homeopathic drug products to the new alcohol limitations would cause their removal from the market. One comment contended that to proceed with a rulemaking that has the effect of destroying an entire industry without the support of an economic impact analysis would contravene regulatory requirements.

The agency does not have sufficient data or information to determine whether orally ingested homeopathic drug products can be reformulated with 10 percent alcohol or less. Due to the manner in which homeopathic drug products are manufactured, the agency will not make a decision concerning the appropriate alcohol content of these products until it obtains the necessary data and information on how these products are manufactured and why they need such high levels of alcohol for product formulation. Rather than delay publication of this final rule, the agency will temporarily exempt orally ingested homeopathic drug products from the alcohol percentage limitations in § 328.10(b), (c), and (d). The agency will publish its decision concerning the appropriate alcohol content for orally ingested homeopathic drug products in a future issue of the **Federal Register**.

15. One comment suggested it would be more cost effective for industry and FDA to exempt herbal drugs that contain more than 50 percent herbal products on a weight to volume (w/v) basis, rather than require individual exemptions for herbal drug products that contain more than 10 percent alcohol by necessity.

The agency disagrees with the comment. The purpose of § 328.10 (e) is to exempt OTC drug products for which no alternatives to alcohol exist. The comment submitted no evidence to support why all herbal drug products that contain 50 percent (w/v) herbal ingredients should be automatically exempt.

16. One comment stated that the OTC drug product Aromatic Cascara Fluidextract, which contains 18 to 20 percent alcohol, cannot be formulated at lower alcohol concentrations because of its susceptibility to microbial contamination. The comment added that if the product were reformulated to 10 percent alcohol or less, it would not be within the specifications set forth in the United States Pharmacopeia (U.S.P.).

The comment is correct in stating that if Aromatic Cascara Fluidextract were

reformulated to 10 percent alcohol or less, it would not be within the specifications set forth in the U.S.P. Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract both contain between 18 and 20 percent alcohol (Ref. 1). The comment did not provide any data to substantiate that microbial contamination would occur if Aromatic Cascara Fluidextract were to be formulated at lower alcohol concentrations. Thus, the agency does not have sufficient data or information to determine whether Aromatic Cascara Fluidextract or Cascara Sagrada Fluidextract can be formulated with less alcohol.

The agency is currently working with the United States Pharmacopeial Convention (U.S.P.C.) to ascertain if a lower alcohol concentration can be used. Rather than delay publication of this final rule, the agency will temporary exempt Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract from the requirements in § 328.10(b), (c), and (d). The agency will publish its decision concerning the appropriate alcohol content for Aromatic Cascara Fluidextract and Cascara Sagrada Fluidextract in a future issue of the **Federal Register**.

Reference

(1) The United States Pharmacopeia 23—The National Formulary 18, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 282, 1994.

II. The Agency's Final Conclusions on OTC Drug Products Intended for Oral Ingestion that Contain Alcohol

The agency is issuing a final rule establishing the following limits on the concentrations of alcohol as an inactive ingredient in OTC drug products intended for oral ingestion: (1) 10 percent alcohol for products labeled for use by adults and children 12 years of age and over, (2) 5 percent alcohol for products labeled for use by children 6 to under 12 years of age, and (3) 0.5 percent alcohol for products labeled for use by children under 6 years of age. Further, the agency strongly recommends that OTC drug products for oral ingestion not contain any more than the minimum amount of alcohol necessary for use as a solvent, preservative, flavor (to enhance taste), or any other pharmaceutical purpose.

The agency concludes that the term ''alcohol free'' should mean no (0 percent) alcohol in a product. This requirement will assure consumers who want to purchase an OTC drug product with out alcohol that the product, in fact, contains no alcohol. The agency has determined that the alcohol content information should appear prominently and conspicuously on the principal display panel of the OTC drug product. This requirement is consistent with section 502(c) of the act (21 U.S.C. 352(c)). Further, because section 502(e) of the act requires that the quantity, kind, and proportion of alcohol be stated on a drug product's label, the alcohol content will also need to appear on the immediate container label when that container (e.g., a glass bottle) is marketed in another retail package, e.g., an outer box. This dual labeling of alcohol content will be beneficial should a consumer discard the outer package.

In accordance with the provisions found in § 328.10(e), the agency is temporarily exempting Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested OTC homeopathic drug products from the requirements in § 328.10(b), (c), and (d). Additional information is needed about the formulations of these specific products. Rather than delay publication of this final rule to resolve the outstanding issues, the agency is temporarily exempting these products from some of the requirements. The agency will publish its decision concerning the appropriate alcohol content for Aromatic Cascara Fluidextract, Cascara Sagrada Fluidextract, and orally ingested homeopathic drug products in a future issue of the **Federal Register**. In the interim, these products must meet the labeling requirements in § 328.50.

III. Analysis of Impacts

An analysis of the cost and benefits of this regulation, conducted under Executive Order 12291, was discussed in the proposed rule (58 FR 54466 at 54470). Several comments concerning the reformulating, testing, repackaging, and relabeling of homeopathic drug products were received in response to the agency's request for specific comment on the economic impact of this rulemaking. The agency is temporarily exempting orally ingested homeopathic drug products from the requirements in § 328.10(b), (c), and (d) of this rulemaking. Therefore, no reformulation or testing will be necessary at this time. Any comments concerning a significant economic impact on reformulating or testing of orally ingested homeopathic drug products will be addressed in a future issue of the **Federal Register**. Homeopathic drug products will be subject to relabeling and repackaging, if necessary, in the same manner as other OTC drug products that contain alcohol and which are affected by this final rule. The burden on all products will be the same--the standard 1 year for relabeling to be done.

Executive Order 12291 has been superseded by Executive Order 12866. FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Within the OTC drug product marketplace, the agency is not aware of a significant number of products that would be affected due to their alcohol content as an inactive ingredient. Products that would be affected consist of a limited number of OTC liquid cough-cold, internal analgesic, laxative, and homeopathic drug products. The effect on orally ingested homeopathic drug products is discussed above, and these products have a partial exemption from the final rule. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 328

Drugs, Labeling, Alcohol.

Therefore, under the Federal Food, Drug, and Cosmetic Act andunder authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended as follows:

1. Part 328 is added to read as follows:

PART 328—OVER-THE-COUNTER DRUG PRODUCTS INTENDED FOR ORAL INGESTION THAT CONTAIN ALCOHOL

Subpart A—General Provisions

Sec.
328.1 Scope.
328.3 Definitions.

Subpart B—Ingredients

328.10 Alcohol.

Subpart C—Labeling

328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

Authority: Secs. 201, 301, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 371).

Subpart A—General Provisions

§ 328.1 Scope.

Reference in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 328.3 Definitions.

As used in this part:

(a) *Alcohol* means the substance known as ethanol, ethyl alcohol, or Alcohol, USP.

(b) *Inactive ingredient* means any component of a product other than an active ingredient as defined in § 210.3(b)(7) of this chapter.

Subpart B—Ingredients

§ 328.10 Alcohol.

(a) Any over-the-counter (OTC) drug product intended for oral ingestion shall not contain alcohol as an inactive ingredient in concentrations that exceed those established in this part, unless a specific exemption, as provided in paragraph (e) or (f) of this section, has been approved.

(b) For any OTC drug product intended for oral ingestion and labeled for use by adults and children 12 years of age and over, the amount of alcohol in the product shall not exceed 10 percent.

(c) For any OTC drug product intended for oral ingestion and labeled for use by children 6 to under 12 years of age, the amount of alcohol in the product shall not exceed 5 percent.

(d) For any OTC drug product intended for oral ingestion and labeled for use by children under 6 years of age, the amount of alcohol in the product shall not exceed 0.5 percent.

(e) The Food and Drug Administration will grant an exemption from paragraphs (b), (c), and (d) of this section where appropriate, upon petition under the provisions of § 10.30 of this chapter. Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented in the petition. Decisions with respect to requests for exemption shall be maintained in a permanent file for public review by the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

(f) The following drugs are temporarily exempt from the provisions of paragraphs (b), (c), and (d) of this section:

(1) Aromatic Cascara Fluidextract.

(2) Cascara Sagrada Fluidextract.

(3) Orally ingested homeopathic drug products.

Subpart C—Labeling

§ 328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

(a) The amount (percentage) of alcohol present in a product shall be stated in terms of percent volume of absolute alcohol at 60 °F (15.56 °C) in accordance with § 201.10(d)(2) of this chapter.

(b) A statement expressing the amount (percentage) of alcohol present in a product shall appear prominently and conspicuously on the ''principal display panel,'' as defined in § 201.60 of this chapter. For products whose principal display panel is on the immediate container label and that are not marketed in another retail package (e.g., an outer box), the statement of the percentage of alcohol present in the product shall appear prominently and conspicuously on the ''principal display panel'' of the immediate container label.

(c) For products whose principal display panel is on the retail package and the retail package is not the immediate container, the statement of the percentage of alcohol present in the product shall also appear on the immediate container label; it may appear anywhere on that label in accord with section 502(e) of the Federal Food, Drug, and Cosmetic Act.

(d) The statement expressing the amount (percentage) of alcohol present in the product shall be in a size reasonably related to the most prominent printed matter on the panel or label on which it appears, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

(e) For a product to state in its labeling that it is ''alcohol free,'' it must contain no alcohol (0 percent).

(f) For any OTC drug product intended for oral ingestion containing over 5 percent alcohol and labeled for use by adults and children 12 years of age and over, the labeling shall contain the following statement in the directions section: ''Consult a physician for use in children under 12 years of age.''

(g) For any OTC drug product intended for oral ingestion containing over 0.5 percent alcohol and labeled for use by children ages 6 to under 12 years of age, the labeling shall contain the following statement in the directions section: ''Consult a physician for use in children under 6 years of age.''

(h) When the direction regarding age in paragraph (e) or (f) of this section differs from an age-limiting direction contained in any OTC drug monograph in this chapter, the direction containing the more stringent age limitation shall be used.

Dated: March 1, 1995,

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–6128 Filed 3–10–95; 8:45 am]

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federal register

Monday
March 13, 1995

Part XI

Department of Education

Fund for the Improvement of Education; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.215S]

Fund for the Improvement of Education: Demonstration Programs; (1) Elementary School Counseling Partnerships; (2) Middle School-Workplace-Community Partnerships; Notice Inviting Applications for New Awards for Fiscal Year 1995

Purpose of Program: The purpose of the Fund for the Improvement of Education is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to support demonstration projects as a way to address the broader FIE objectives.

Eligible Applicants: State and local educational agencies, institutions of higher education, other public and private agencies, organizations, and institutions may apply for grants under this program.

Deadline for Transmittal of Applications: April 28, 1995.

Deadline for Intergovernmental Review: June 27, 1995.

Applications Available: March 14, 1995.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$250,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $250,000 for the first 12-month budget period.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities

The notice of final priority for this program is published elsewhere in this issue of the **Federal Register,** and is repeated below. Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of the following absolute priorities.

Absolute Priority 1—Elementary School Counseling Partnerships

Applicants must propose activities to develop, implement, and evaluate strategies for supporting elementary school counseling. Projects must include professional development to improve the skills of pupil services personnel and guidance counselors for working with students from diverse populations, and activities promoting school-linked services integration. Projects must involve collaborative efforts among local education agencies, institutions of higher education, businesses, labor organizations, community groups, social service agencies, or other public or private entities to design and carry out the program.

Absolute Priority 2—Middle School-Workplace-Community Partnerships

Applicants must propose activities designed to make school relevant to the workplace and the community for middle school students. Projects must be built upon partnerships developed among middle schools, employers, and the community. Projects must emphasize the integration of high quality academic and vocational learning, stress excellence and high expectations for success in academic subjects, and instill responsibility, decision making, problem solving, interpersonal skills, and other competencies in students.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

Note: Projects requesting funding under this program must be designed so that the effectiveness of the programs, projects and activities that will be conducted is readily ascertainable.

To Request an Application: Voice Mail: 202–219–2053; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW., Washington, DC 20208–5645. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215S: Fund for the Improvement of Education)

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

[FR Doc. 95–6134 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Education (FIE)

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Year (FY) 1995: Demonstration Programs: (1) Elementary School Counseling Partnerships; (2) Middle School-Workplace-Community Partnerships.

SUMMARY: The Secretary announces the final priorities for the FIE Demonstration Programs for Elementary School Counseling Partnerships and Middle School-Workplace-Community Partnerships.

EFFECTIVE DATE: These priorities take effect April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen O'Brien, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Washington, DC 20208–5645. Telephone 202–219–2141. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the Fund for the Improvement of Education is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State

content standards, and contribute to the achievement of the National Education Goals. The priorities announced in this notice will support demonstration projects as a way to address the broader FIE objectives.

The Secretary recognizes that successful well-articulated programs that provide for continuous improvement of professional educators and improvement of services to students will require educators to work together across traditionally separated roles and organizations. Therefore, projects must be carried out by partnerships consisting of educational organizations and other public and private sector organizations.

Section 10101(b)(1)(A) of the FIE statute authorizes the Secretary to fund activities that will promote systemic education reform at the State and local levels. The Secretary believes that professional development, not only for teachers, but also for pupil services personnel and guidance counselors, is an essential element of effective systemic reform efforts.

In recent years, school-community-business partnerships have become an effective strategy for school improvement. Many communities have developed effective school and workplace experiences for students at the junior high and high school levels. The Secretary believes that school-workplace-community programs can be equally effective for middle school students, and can help younger students begin to think of the opportunities they will have in the future.

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of the following absolute priorities.

Absolute Priority 1—Elementary School Counseling Partnerships

Applicants must propose activities to develop, implement, and evaluate strategies for supporting elementary school counseling. Projects must include professional development to improve the skills of pupil services personnel and guidance counselors for working with students from diverse populations, and activities promoting school-linked services integration. Projects must involve collaborative efforts among local education agencies, institutions of higher education, businesses, labor organizations, community groups, social service agencies, or other public or private entities to design and carry out the program.

Absolute Priority 2—Middle School-Workplace-Community Partnerships

Applicants must propose activities designed to make school relevant to the workplace and the community for middle school students. Projects must be built upon partnerships developed among middle schools, employers, and the community. Projects must emphasize the integration of high quality academic and vocational learning, stress excellence and high expectations for success in academic subjects, instill responsibility, decision making, problem solving, interpersonal skills, and other competencies in students.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the absolute priority in this notice. However, in order to make timely grant awards in FY 1995, the Assistant Secretary, in accordance with section 437(d)(1) of the General Education Provisions Act, has decided to issue the absolute priority as final requirements that will apply only to the FY 1995 grant competition.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Note: This action is not an application notice. You may request an application by *Voice mail:* 202–219–2158; *Facsimile machine:* 202–219–1407; *Mail:* OERI/FIE Application, 555 New Jersey Avenue, NW, Washington, DC 20208–5644.

Program Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215S: Fund for the Improvement of Education)

Dated: March 8, 1995.

Sharon P. Robinson,

Assistant Secretary for Research and Improvement.

[FR Doc. 95–6133 Filed 3–10–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
March 13, 1995

Part XII

Department of Labor

Office of the Secretary

The American Workplace for Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts; Delegation of Authority; Notice

DEPARTMENT OF LABOR

[Secretary's Order 2–95]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for the American Workplace for Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts

March 8, 1995.

1. *Purpose*. To delegate the authority and assign the responsibility in the Department of Labor for the implementation and administration of the Secretary of Labor's responsibilities under Executive Order 12954, Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts, which established the policy that contracting agencies in the Executive Branch shall not contract with employers that permanently replace lawfully striking employees.

2. *Authority and Directives Affected*.

a. *Authority*. This Order is issued pursuant to Executive Order 12954, dated March 8, 1995; the Act of March 4, 1913 (29 U.S.C. 551 *et seq.*); and 5 U.S.C. 301 and 302.

b. *Directives Affected*. The authority delegated herein is in addition to that delegated to the Assistant Secretary for the American Workplace in Secretary's Order 2–93, which Order remains in effect.

3. *Background*. Efficient economic performance and productivity are directly related to the existence of cooperative working relationships between employers and employees. When federal contractors permanently replace their striking employees, the Federal Government's efficiency and cost of operations are adversely affected. In order to operate as effectively as possible, by receiving timely goods and quality services from contracting agencies, Executive Order 12954 requires that contracting agencies of the Executive Branch shall not contract with employers that permanently replace lawfully striking employees. Section 6 of the Executive Order assigns the responsibility for the administration and enforcement of the Executive Order to the Secretary of Labor.

4. *Delegation of Authority and Assignment of Responsibility*.

a. *The Assistant Secretary for the American Workplace* is hereby delegated authority and assigned responsibility, vested in the Secretary of Labor, for carrying out the policies, programs, and activities under Executive Order 12954.

b. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department of Labor relating to the implementation and enforcement of this Order and the Executive Order.

5. *Redelegation of Authority*. The authority delegated and responsibilities herein assigned may be further redelegated. Any transfer of functions to other components of the Department of Labor shall be made pursuant to an appropriate agreement with the approval of the agency head(s) involved.

6. *Effective Date*. This Order is effective immediately.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–6189 Filed 3–9–95; 9:59 am]

BILLING CODE 4510–23–M

federal register

Monday
March 13, 1995

Part XIII

Federal Retirement Thrift Investment Board

5 CFR Parts 1650 and 1653

Retirement Benefits Court Order Regulations; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1650 and 1653

Retirement Benefits Court Order Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations governing retirement benefits court orders. The regulations contain a number of procedural changes which reflect the Board's experience in processing retirement benefits court orders, as well as changes in Federal tax law. The regulations establish a new Part in the Code of Federal Regulations replacing existing regulations regarding court orders.

EFFECTIVE DATE: April 12, 1995.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis, (202) 942–1658.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code. The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant. 5 U.S.C. 8437(g).

Under 5 U.S.C. 8467(a), payments from the TSP that would otherwise be made to a TSP participant shall be paid ''to another person if and to the extent that the terms of a court decree of divorce, annulment or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide.'' A related provision, 5 U.S.C. 8435(d), states that an election or change of election of TSP benefits shall not be effective to the extent that it would conflict with ''a court decree of divorce, annulment or legal separation * * * or any court order or court-approved property settlement agreement incident to such decree * * *.'' The TSP need only honor court orders or decrees meeting the requirements of 5 U.S.C. 8467(a) and 8435(d) if the Executive Director receives proper notice of the order before disbursement of the participant's account.

These regulations, when effective, will supersede the interim regulations presently found at 5 CFR §§ 1650.27 to 1650.43. Proposed regulations governing alimony and child support orders which are governed by 5 U.S.C. 8437(e)(3) will be promulgated in a separate subpart of Part 1653.

On October 26, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 53874) relating to the Board's processing of court orders and decrees described in 5 U.S.C. 8435(d) and 8467 and referred to as ''retirement benefits court orders.'' The Board did not receive any comments on the proposed regulations.

The Board, however, is making two changes to § 1653.3 of the regulations. First, the Board is deleting the notification provision in paragraph (c). Due to the increasing volume of court orders which are being processed by the Board, providing notification to the parties that the participant's account was frozen upon receipt of a court order has become administratively burdensome. Therefore, the Board has decided that the decision letter regarding the court order provides sufficient notice that the participant's account has been frozen. Second, paragraph (k) is being added to provide that the Board will hold in abeyance the processing of a court order payment pursuant to a qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order.

Section-By-Section Analysis

Section 1653.1 states the purpose of the regulations. The procedures set forth in the regulations will be applied in determing whether the Board must honor orders purporting to constitute retirement benefits court orders described in 5 U.S.C. 8435(d) and 8467. The regulations also establish procedures for calculation and payment of awards pursuant to qualifying retirement benefits court orders.

Section 1653.2(a) sets forth the general rule that only ''qualifying'' retirement benefits court orders will be honored. If an order is determined not to be qualifying, it will not affect the participant's account. TSP participants involved in divorce proceedings, and their representatives, are encouraged to read the TSP publication ''Information About Court Orders'' to obtain useful information for drafting and submitting court orders that will be deemed qualifying under the regulations.

Section 1653.2(b) sets forth the requirements for a court order to be ''qualifying.'' Section 1653.2(b)(1) describes the type of legal document that can be a qualifying order. The first sentence is designed to clarify that the language ''court decree of divorce, annulment, or legal separation,'' as used in both 5 U.S.C. 8435(d) and 8467 has been interpreted by the Board to mean ''a court decree of divorce, a court decree of annulment, or a court decree of legal separation.'' In order to have a qualifying court order, a court must be involved. A legal separation agreement that has not been approved by a court, for example, is not a ''court decree of legal separation,'' and therefore cannot constitute a qualifying court order. Also, a property settlement agreement must be court-approved in order to be qualifying. This means that the court's approval must be demonstrated on the face of the document or in an accompanying court order.

The second sentence of § 1653.2(b)(1) is designed to make it clear that a ''court order or court-approved property settlement agreement incident to [a decree of divorce, of annulment or of legal separation]'' may occur at any stage of the proceeding, not just after the entry of a final decree of divorce, of annulment or of legal separation. For example, courts often issue orders during a divorce proceeding in order to preserve the *status quo* in anticipation of a final decree dividing the property of the parties. The regulations also allow for the possibility that an order serving a function other than preservation of the *status quo* could be deemed ''incident to'' a decree that has not yet been entered.

If the Board receives an otherwise valid order awarding a former spouse a portion of a TSP account, but prior to payment receives a valid amended order changing the earlier award, the amended order will be honored. However, under no circumstances will the Board accept the return to the TSP of funds that have been properly paid pursuant to an earlier order, even if a subsequent order would dictate such a result. The processing of multiple court orders is addressed in § 1653.3(1).

Section 1653.2(b)(2) addresses the requirement in 5 U.S.C. 8435(d)(2)(A) that a court order must ''expressly relate'' to a participant's TSP account and the requirement in 5 U.S.C. 8467 that the court order must ''expressly provide'' for payment to someone other than the participant. For an order to be honored under either provision, the order must unambiguously address the TSP account.

Section 1653.2(b)(2)(i) requires that an order must clearly and specifically deal with a participant's TSP account. It is not sufficient to use generic language that is arguably broad enough to include the TSP. For example, an order that states, ''Former Spouse is awarded 50% of all of Participant's Federal retirement benefits'' would not be language that expressly relates to the TSP, even though the TSP is a Federal retirement benefit. First, the order must describe it in such a way that there can be no confusion that the parties are referring to the TSP, rather than some other plan or financial assets; parties to divorce actions are encouraged to attempt to obtain such specific language in their orders. However, § 1653.2(b)(2)(ii) makes it clear that, even if the Thrift Savings Plan is identified by name, the order must not contain language that is inconsistent with the division of a participant's interest in a defined contribution plan, such as the TSP, in which the participant has an individual account. References to ''benefit formulas,'' ''accrued benefits,'' or ''eventual benefits'' may or may not be acceptable in context, because such terms may raise the question whether the order is truly dealing specifically with the TSP account or is simply including the TSP among other retirement benefits to which the participant may be entitled. Since use of such terms may lead the Board to reject an order as not expressly relating to the TSP account, these terms should be avoided in favor of references to the ''TSP account'' or ''TSP account balance.''

Section 1653.2(b)(3) further implements the requirement of 5 U.S.C. 8467 that a payment pursuant to a court order must be expressly provided for in the order. If the order requires a payment from the TSP account, it must either award a specific dollar amount or divide the participant's account balance by applying a fraction, a percentage, or a formula that yields a mathematically possible result. For example, a formula where the numerator is larger than the denominator and therefore yields an amount greater than the entire account balance is not acceptable. All of the variables for the formula must also be set forth in the order or must be available through reference to Government employment records. The dollar amounts, percentages, fractions or variables used must be clearly determinable; they cannot be qualified by terms such as ''approximately.'' The order may or may not provide for interest or earnings to be added to the amount of the award, but any award of earnings must also be clearly determinable. The order may also award a survivor annuity under 5 U.S.C. 8435(e).

Under § 1653.2(b)(4), an order will only be deemed qualifying if it calls for payment to the spouse, former spouse, attorney for the spouse or former spouse, dependent children of the participant, other dependents of the participant, or the attorney for the participant's dependent children or other dependents. Payment cannot be made to the participant or to others, such as credit card companies, mortgage lenders, or other creditors of the parties to the divorce. The TSP is a retirement savings plan, and the occasion of a divorce should not be a general opportunity for the participant to obtain access to his or her account or for the parties to use retirement savings to liquidate their general debts. In this context, payment to the attorney for the participant is tantamount to a payment to the participant, since the participant owes a debt to the attorney. Thus, the rules would not permit such a payment. In contrast, it is permissible for the court to award a payment from the TSP account to the attorney representing the spouse/former spouse or dependent children or other dependents for legal fees incurred in connection with the divorce, because direct payments to the spouse/former spouse or dependent children or other dependents are also permissible. The Board will not honor an order asking for payment to be made jointly, such as to the former spouse and his or her children. Rather, the order should separately specify the award to be made to each person.

Section 1653.2(c) specifically states that certain orders are not qualifying. Section 1653.2(c)(1) provides that an order relating only to money that is not vested (under 5 U.S.C. 8432(g)) shall not be deemed a qualifying order unless the money will become vested within 90 days of receipt of the order if the participant were to remain in Federal employment.

Section 1653.2(c)(2) represents a significant departure from current rules for processing court orders. Under current rules the Board has been paying court orders as soon as the amount of the award can be calculated, even where the order calls for a payment at a later date. In cases where a dollar amount is awarded and the order specifies that payment is to be made upon a date in the future, that dollar amount has been paid immediately. On the other hand, where the amount of the award is based on a percentage of the account balance as of a date in the future (such as the participant's separation from Federal Government employment or some other specified date), or is based on a percentage determined by a formula containing variables that cannot be determined until a date in the future, the Board's current procedures have called for the order to be retained by the Board so that payment could be made at the appropriate time in the future.

Under § 1653.2(c)(2)(i), orders requiring payment at a future specified date will not be considered qualifying orders unless two requirements are met. First, it must be currently possible to calculate the amount of the entitlement. Second, the award must provide for interest or earnings to be paid on the amount of the award until the date of payment. If both of these requirements are met, the order will be considered qualifying. However, payment will be made not at the future date specified in the order, but rather will be made currently after following the procedures of § 1653.5. The rationale for this limited exception to the general rule that orders requiring future payment will be rejected is that, where the amount of the award can currently be calculated and the order calls for interest or earnings, a payment of that amount currently is the economic equivalent of a payment of the same amount plus earnings at a future date. However, under the regulations there will be no case in which the Board will hold orders until a future date specified by a court for payment.

Section 1653.2(c)(2)(ii) is designed to clarify that it is not necessary for the exact amount of the award to be determinable upon receipt of the order by the Board. An order may be qualifying if it provides for a current payment to be calculated as of the date of payment. The Board recognizes that the procedures set forth in the regulations will often require a few months between the receipt of the order by the Board and the payment of the account. Orders will not be deemed non-qualifying future orders merely because the amount of the award cannot be calculated until a payment date that will invariably be later than the date of receipt of the order by the Board. For example, an order that incorporates a formula using a variable such as the number of months of the participant's Federal employment as of the date of payment would not be considered a non-qualifying future order, even though the length of the participant's Federal service will have to be determined as of the date of payment, which is likely to be a few months after the Board's receipt of the order.

Section 1653.2(d) defines the term ''former spouse'' as used in the

regulations by adopting the definition contained in 5 U.S.C. 8401(12).

Section 1653.3 sets forth procedures for reviewing retirement benefits court orders. Section 1653.3(a) provides that the Board will process court orders in accordance with applicable Federal law, namely FERSA and the Board's regulations. The Board's processing of court orders is not controlled by the procedures of the state divorce courts, nor will the Board take into account any fact or rule of state or local law that renders an order invalid which is otherwise valid on its face.

Section 1653.3(a) also makes it clear that the Board cannot be made a party to the underlying divorce action and thereby be subject to the jurisdiction of the court handling the divorce proceeding. The Board is a Federal agency which, under the doctrine of sovereign immunity, is not subject to suit in state court absent specific statutory authorization. Therefore, legal process to join the Board as a party to a divorce proceeding will not be honored. Parties to a divorce must, without the Board's participation in the proceeding, obtain from the court an appropriate order and then submit that order to the Board for a determination as to whether it is a qualifying order. To the extent there is any dispute about the Board's actions concerning a court order, the matter must be resolved in Federal court under 5 U.S.C. 8477, not in state court.

Section 1653.3(b) provides the address for the TSP recordkeeper to which court orders should be sent for processing. Receipt by the recordkeeper is deemed receipt by the Board.

Section 1653.3(c) provides the general rule that the Board will ''freeze'' the account of a TSP participant for whom a document has been received that purports to be a qualifying retirement benefits court order. When an account is frozen, the participant may not withdraw the account or obtain a loan from the account. The freeze is intended to ensure that the participant may not defeat the purposes of a court order by removing the funds from the account while the Board is conducting its review of what may turn out to be a valid order. Both 5 U.S.C. 8435(d) and 8467 indicate that the Executive Director may not make payments to the participant after receiving a qualifying court order until the court order has been complied with.

Section 1653.3(d) lists certain types of documents that the Board views as not even purporting to constitute qualifying retirement benefits court orders. Therefore, these documents will be rejected without substantive review and no freeze will be placed on the account. Section 1653.3(d)(1) provides that an order will be rejected if it fails to indicate on its face that it has been issued or approved by a court, unless an accompanying document plainly establishes that the order was approved or issued by a court. An unsigned order will be rejected under this provision.

Section 1653.3(d)(2) provides that an order will be rejected where the account has been closed, which may have occurred either because the participant withdrew his or her account or because the entire account was paid pursuant to an earlier court order. Similarly, because FERSA was enacted on June 6, 1986, court orders entered before that date cannot ''expressly relate'' to a TSP account, since the court could not have contemplated the existence of a TSP account. Accordingly, under § 1653.3(d)(3), such orders will be rejected without review. Court orders awarding funds in the TSP account only to the participant (§ 1653.3(d)(4)) and court orders failing to make any mention of any retirement benefits (§ 1653.3(d)(5)) will also be rejected without substantive review and without freezing the account.

Sections 1653.3 (e) and (f) require a court order to be either an original or a copy of a complete court order. If a court order is not complete, the parties will be given 30 days to submit a complete document. If it is not received within 30 days, the account will be unfrozen and the order will not be reviewed further. However, if the incomplete order does not include a signature or other indication that it was properly issued or approved by a court, then it will be rejected under § 1653.3(d)(1) without a 30-day period for resubmission.

Sections 1653.3 (g) and (h) require the Board to determine whether court orders accepted for review under this subpart constitute qualifying orders and to provide an explanation of the decision. If the order is found to be qualifying, the decision will state the effect of the order on the TSP account of the participant. In many cases, the effect of a final divorce decree will be a payment from the participant's account to the spouse or former spouse. In the case of a preliminary order, the effect is often maintenance of a freeze on the account until a further court order is received by the Board.

Under current Board procedures, the Board's decisions provide a 30-day appeal period for the parties to request an administrative review of the decision by the Executive Director. Section 1653.3(i) eliminates that appeal period and makes the Board's initial decision the final administrative action. In the Board's experience, the appeal period has been used primarily as a time for seeking from the divorce court a new order to supersede the earlier order, rather than to raise substantive issues relating to the Board's decision.

The Board believes that it is appropriate for the divorce court, rather than the Board, to clarify any questions concerning the meaning of the order. Elimination of the appeal period will not, however, eliminate any opportunity for the parties to return to the divorce court for an amended order, since § 1653.5(a) provides that even after a determination that an order awards a portion of a TSP account, payment cannot be made until at least 30 days after appropriate tax notification has been provided. Similarly, if the Board determines that an order is not qualifying, § 1653.3(j)(4) provides that the account will remain frozen for 45 days from the date of the Board's determination. Thus, the spouse or former spouse is protected against disbursement of a loan or withdrawal to the participant during the 45-day period, and may seek a new order from the divorce court during that time.

Section 1653.3(j) describes when a freeze imposed under § 1653.3(c) will be removed. Section 1653.3(j)(1) reiterates the provision in paragraph (f) that if the Board receives an incomplete order the parties will be notified that a complete document must be received within 30 days. If it is not received within that time, the freeze will be removed.

Section 1653.3(j)(2) provides that, where a qualifying order precludes disbursements from the participant's account, the freeze will remain on the account until the order is either superseded or vacated by a subsequent order of the court. Of course, if the subsequent order itself requires freezing the account, then the account will not be unfrozen. A common situation involves a preliminary order entered to preserve the *status quo* by precluding the participant from obtaining a loan or withdrawal from his or her account while the divorce proceedings are pending. The court then enters a final divorce decree, which dissolves the preliminary order but also includes an award of a portion of the TSP account to the former spouse. Because the final divorce decree will itself require that the account be frozen, the freeze will remain on the account until payment of the former spouse's share.

Section 1653.3(j)(3) provides that, where it is determined that an order makes an award of a portion of a TSP account, the freeze will be removed upon payment.

As discussed in connection with the elimination of the appeal period, § 1653.3(j)(4) provides that, where the Board determines that an order is not qualifying, the account will remain frozen for 45 days after that determination. This enables the parties to seek and submit to the Board a new, qualifying order from the divorce court, without concern that the participant may withdraw or borrow from his or her account during the 45-day period. Alternatively, a party may seek to challenge the Board's determination in Federal court. The freeze may be removed sooner than the expiration of the 45-day period only upon written agreement from both parties to the divorce proceedings.

Section 1653.3(k) provides that the Board will hold in abeyance the processing of a court order payment pursuant to a qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order. The Board has decided that it should not make payments under court orders that are on appeal. However, the Board also will presume that any court order that appears valid on its face has not been appealed and thus remains valid. Absent notice from one of the parties, the Board will not be responsible for following local or state procedural rules which might otherwise prevent enforcement of the order.

The party notifying the Board of the appeal of the court order must provide proper documentation of the appeal, as well as citations to legal authority which address the effect of the filing of such an appeal. In the absence of proper documentation and appropriate legal authority, the Board will proceed with the payment process. If the Board receives proper documentation and citations to legal authority, the Board will notify all of the parties that it has held the processing of the account in abeyance because of the appeal in the state court system. The account will remain frozen for loans and withdrawals. In order for the freeze to be removed or a payment to be made, the Board must be notified by one of the parties of the disposition of the appeal, provided with a statement regarding the effect of the disposition on the provisions of the original order relating to the TSP, and provided with a copy of the resulting document from the court.

Section 1653.3(l) provides the rules for processing multiple court orders. Section 1653.3(l)(1) provides that, where there are conflicting orders arising from the same divorce proceeding and involving the same spouse or former spouse, the order bearing the latest date will supersede any earlier orders, regardless of the dates on which they are received by the Board. The date will be determined by using the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Since 5 U.S.C. 8467(a) provides that ''[a]ny payment under this subsection to a person bars recovery by any other person,'' the general rule set forth in § 1643.3(l)(1) obviously cannot be applied if payment on the first order received has already been made before the Board receives a later order that would have superseded the first order. Moreover, consistent with the last sentence of § 1653.2(b)(1), no court order will be honored to the extent that doing so would require the Board to accept the return of money already properly paid pursuant to another order.

Section 1653.3(l)(2) provides that where there are conflicting orders involving different spouses or former spouses, the order with the earliest date (determined in the same manner as under § 1653.3(l)(1)) will be given priority (again, unless payment on the first order received has already been made). Any payments from the account will be made first based on the order bearing the earliest date, and proceeding through any additional orders until the account is exhausted. It is presumed that the earliest order established rights for the spouse or former spouse named in that order which cannot be affected by subsequent orders in different cases in which the first spouse is not a party.

Section 1653.4 sets forth rules for calculation of the amount of an entitlement. TSP accounts are valued once a month as of the last day of the month. Under § 1653.4(a), if the date or event specified in the order for calculating the award falls on any day except the last day of the month, the account balance on which the amount of the entitlement is based is determined as of the last day of the previous month. Unless otherwise excluded by the court order, any outstanding loan balance as of the end of the month used for calculating the entitlement will be included in the account balance for this calculation. If the date or event specified in the order falls on the last day of a month, the account balance is determined as of that day.

The actual month-end account balance used to calculate the entitlement must be adjusted by transactions which are processed before the payment is processed but which relate to the period on or before the month-end used for the calculation. For example, assume that in March 1995 the Board receives a qualifying court order awarding the former spouse one-half of the participant's account balance as of the end of February 1995. In May 1995, the Board processes an adjustment record received from the participant's employing agency which removes from the account $100 that was determined by the agency to be an excess contribution erroneously made by the agency in January 1995. If payment pursuant to the court order is made in July 1995, the amount paid would be computed based on the February 1995 month-end account balance, minus the $100 which was removed from the account in May 1995 but which related to the period prior to the February month-end computation date. On the other hand, if the adjustment record was for an erroneous contribution made in April 1995, then the February balance would be used in the calculation of the former spouse's award without reduction for the $100 adjustment.

Section 1653.4(b) provides that, where the award does not cite a specific date or event, the entitlement will be calculated based on the month-end balance on or immediately preceding the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Once the appropriate date is established, the rules of paragraph (a) are applied as if that date had been specified in the order.

Section 1653.4(c) provides that, if the court awards a specific dollar amount, but indicates that the amount awarded must be paid out of the balance that is in the account on a certain date, the award will be for the lesser of the amount awarded or the appropriate month-end account balance, determined and adjusted under the same rules as in paragraph (a). This approach is based on the notice that the court has no power to award a sum that is greater than the amount in the account on the particular date cited in the order. Also similar to the rules set forth in paragraph (a), if no date is specified in the court order, the award will be assumed to be based on the date the order was entered, filed, or signed, as appropriate.

Under § 1653.4(d), unless the court order specifies otherwise, no earnings will be credited to the amount awarded. If the court specifies that interest or earnings are to be credited, but does not specify a rate or method of calculation, the Board will use the actual rate of return on the participant's account for the time period involved based on the funds in which the account is invested. The participant's account may be invested in one or more of the following funds: The Government Securities Investment (G) Fund, the Common Stock Index Investment (C) Fund, the Fixed Income Index Investment (F) Fund. Because the earnings may be based in whole or in part on the earnings of the C Fund or the F Fund, and those funds may suffer losses for any given period of time, the earnings credited to the award could be either positive or negative. The earnings calculation will begin with the month after the month-end balance used in calculating the principal amount of the award, and will end with the month preceding payment. If the court specifies a different method for calculating interest to be credited to the award, that method will be used.

Section 1653.4(e) makes it clear that under no circumstances may a participant's Agency Automatic (1%) Contributions be paid pursuant to a court order if those funds are not vested under 5 U.S.C. 8432(g) at the time of payment. While the entitlement may initially be calculated to include such nonvested sums for purposes of advising the parties of the amount awarded, the amount will be recalculated excluding those sums if they have not become vested by the date of payment.

Section 1653.5 sets forth the procedures for making payments pursuant to qualifying retirement benefits court orders. Under § 1653.5(a), if a qualifying order is found to require payment, an appropriate tax notification will be provided to the payee after issuance of the Board's decision. Payment will not be made less than 30 days after issuance of the tax notification because, under the Internal Revenue Code, the payee will often have the right to elect a transfer to an Individual Retirement Arrangement (IRA) or other eligible retirement plan, or to make a tax withholding election. As discussed with respect to the elimination of the period for appeal of the Board's decision, this minimum waiting period of 30 days also provides the participant an opportunity to seek an amended order from the state divorce court or to challenge the Board's determination in Federal court under 5 U.S.C. 8477.

Section 1653.5(b) states that payment must be made directly to the individual(s) specified in the court order. However, as required by the Internal Revenue Code, this paragraph also provides for a spouse or former spouse to elect to have all or a part of the payment transferred directly to an IRA or other eligible retirement plan.

Section 1653.5(c) provides that no payment may be made from an account that exceeds the vested account balance at the time of payment, excluding any outstanding loan at the time of payment. Although outstanding loan balances are included for purposes of computing the amount of an award as of the appropriate computation date as determined in accordance with § 1653.4, payment cannot include any amount that is outstanding as a loan, because the money is not in the account and thus is not available to be paid.

Section 1653.5(d) provides that orders requiring a series of payments will not be deemed qualifying orders. If an order requires a payment greater than the account balance as of the date of the payment, the full amount of the account will be paid pursuant to the order. If the account subsequently receives additional money, that money will not be paid pursuant to the court order. A new court order would be required for payment of the additional sums. In essence, a payment pursuant to a court order extinguishes all entitlement under that court order; further payment can only be made pursuant to a subsequent order.

Section 1653.5(e) provides that joint payments are not permitted. If more than one person is awarded a portion of the account, the amount awarded to each must be specified in the order. Although the checks will be made payable only to the payee(s) named in the order, the Board will permit each payee to specify the address to which the check should be sent, even if that address is different from an address listed in the court order. However, only the payee may designate an address to which the check should be sent, and such designation must be done in writing. The Board will not honor a change of address submitted, for example, by the payee's attorney. A strict rule against accepting address changes from anyone other than the payee is necessary to protect against forbidden alienation of the benefits to which the payee, as a beneficiary of the TSP, has become entitled. Unless the address is changed by the payee, the check will be sent to an address provided in the court order. If an order provides an address that is ''in care of'' another individual, the check will be issued to the payee but sent to the ''in care of'' address.

Section 1653.5(f) provides that prior to payment the TSP recordkeeper must have the payee's full name, mailing address, and Social Security number. This information may be provided in the court order or separately by the parties or their representatives. However, as discussed in connection with paragraph (e), only the payee may change the mailing address for the check to an address other than his or her own address. The payee's representative may not do so.

Section 1653.5(g) provides that payment will be made to the payee's estate if the payee dies before payment is made pursuant to a court order. It is not necessary that the court order be submitted to the Board prior to the death of the payee, as long as the order was issued prior to the payee's death and in all other respects constitutes a qualifying order. The court may, in the order, provide for an individual or entity other than the payee's estate to receive payment in the event of the payee's death.

If the participant dies prior to payment of the account, a court order entered prior to the participant's death will be honored. It does not matter that the order may not have been received by the Board prior to the participant's death. However, if the order is not received by the Board prior to otherwise proper payment of the account to someone other than the payee(s) specified in the court order, then the court order will not be honored. The Board will neither seek nor accept a return of funds properly paid prior to receipt of a court order.

Section 1653.5(h) provides that remarriage or termination of a legal separation does not nullify a court order that has already been submitted to the Board. The Board does not believe it can be presumed that in all cases in which a domestic relations court divides property, including a TSP account, the division should be rendered void merely because the parties choose to remarry. If that is the court's intent, then the parties must obtain an order to that effect and submit it to the Board before payment is made pursuant to the original court order.

Sectdion 1653.5(i) reflects the last sentence of 5 U.S.C. 8467(a), which provides that, ''Any payment under this subsection to a person bars recovery by any other person.'' Once payment pursuant to a court order has been properly made, the Board will not accept return of the money disbursed.

Nor will an additional payment be made to another payee.

Section 1653.5(j) provides that payments will be made from the TSP investment funds on a *pro rata* basis. For example, if a participant's $10,000 account balance is invested 50% ($5,000) in the G Fund, 30% ($3,000) in the C Fund and 20% ($2,000) in the F Fund, then an award of $1,000 would be paid $500 from the G Fund, $300 from the C Fund, and $200 from the F Fund. The Board will not honor any provision in a court order that requires the payment to be made other than *pro rata* from the TSP investment funds.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the processing of and payment pursuant to retirement benefits court orders.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects

5 CFR Part 1650

Employment benefit plans, Government employees, Retirement, Pensions.

5 CFR Part 1653

Employment benefit plans, Government employees, Retirement, Pensions.

Dated: March 6, 1995.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is amended as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434(a)(2)(E), 8434(b), 8435, 8436, 8467, 8474(b)(5), 8474(c)(1), and sec. 4437, Pub. L. 102–484, 106 Stat. 2724.

2. A new part 1653 is added to read as follows:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

Sec.
1653.1 Purpose.
1653.2 Qualifying retirement benefits court orders.
1653.3 Processing retirement benefits court orders.
1653.4 Calculating entitlement under a retirement benefits court order.
1653.5 Procedures for payment pursuant to retirement benefits court orders.

Subpart B—[Reserved]

Authority: 5 U.S.C. 8435, 8436(b), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Purpose.

This subpart contains regulations prescribing the Board's procedures for processing retirement benefits court orders.

§ 1653.2 Qualifying retirement benefits court orders.

(a) The TSP will only honor the terms of a retirement benefits court order that is qualifying under paragraph (b) of this section.

(b) A retirement benefits court order must meet each of the following requirements to be considered qualifying:

(1) The court order must be a court decree of divorce, of annulment, or of legal separation, or any court order or court-approved property settlement agreement incident to a decree of divorce, of annulment, or of legal separation. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding. Orders issued prior to a final decree, such as orders for the purpose of preserving the *status quo* pending the final resolution of the proceeding, are referred to as ''preliminary'' court orders, and will be considered ''incident to'' a final decree, notwithstanding that a final decree has not yet been, and may not be, issued. Orders issued subsequent to a final decree, such as orders for the purpose of amending such decree, are referred to as ''subsequent'' court orders, and will also be considered ''incident to'' such decree. However, any subsequent court order that requires the return of money properly paid pursuant to an earlier court order will not constitute a qualifying order.

(2) The court order must ''expressly relate'' to the Thrift Savings Plan account of a current TSP participant. This means that:

(i) The order must on its face specifically describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits; and

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the individual participant's ''account'' or ''account balance'' rather than a ''benefit formula'' or the participant's ''eventual benefits.''

(3) If the court order awards an amount to be paid from the participant's TSP account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or stated fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. Any variables in the formula must have values that are readily ascertainable from the face of the order or from Government employment records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(e).

(4) Court orders that make awards from the TSP may only provide for payments:

(i) To spouses or former spouses of the participant;

(ii) As fees for attorneys for spouses or former spouses of the participant;

(iii) To dependent children or other dependents of the participant;

(iv) As fees for attorneys for dependent children or other dependents of the participant;

(c) The following retirement benefits court orders will be considered non-qualifying:

(1) Orders relating to a TSP account that contains only nonvested money, unless the money will become vested within 90 days of the date of receipt of the order if the participant remains in Federal service;

(2) (i) Orders that award an amount to be paid at a future specified date or upon the occurrence of a future specified event, unless:

(A) The amount of the entitlement can be currently calculated; and

(B) The award provides for the payment of interest or earnings from the date of calculation to the specified date or event for payment.

(ii) If an order meets the requirements of paragraphs (c)(2)(i) (A) and (B), a current payment will be made in accordance with the procedures set forth in § 1653.5, rather than a payment at the future date stated in the order.

(d) For purposes of paragraph (c)(2) of this section, orders that require only that the amount of the award be

calculated on the date of payment, without stating a future date or event for payment, will not be considered as awarding an amount to be paid at a future date or upon the occurrence of a future event. In such cases, the date of payment will be determined in accordance with the procedures set forth in § 1653.5, and the amount of the entitlement will be determined in accordance with § 1653.4 using that date of payment.

(e) *Definition*. For purposes of this Part, the term ''former spouse'' shall have the same meaning as set forth in 5 U.S.C. 8401(12).

§ 1653.3 Processing retirement benefits court orders.

(a) Board's review of retirement benefits court orders is governed solely by the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. Chapter 84, and by the terms of this part. The Board will honor retirement benefits court orders properly issued by a court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by 25 U.S.C. 1301(3). However, those courts have no jurisdiction over the Board and the Board cannot be made a party to the underlying domestic relations proceedings.

(b) Retirement benefits court orders should be submitted to the Board's recordkeeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500. Receipt by the recordkeeper will be considered receipt by the Board.

(c) Upon receipt of a document that purports to be a qualifying retirement benefits court order, including preliminary and subsequent court orders, the participant's account will be frozen. After the account is frozen, no withdrawals or loans will be allowed until the account is unfrozen. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted.

(d) The following documents will not be treated as purporting to be qualifying retirement benefits court orders. Therefore accounts of participants to whom such orders relate will not be frozen and these documents will not be reviewed by the Board:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated prior to June 6, 1986;

(4) A court order that fails to award all or any part of the TSP account to anyone other than the participant;

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the document will be reviewed initially to determine if it is a complete original or copy of a retirement benefits court order.

(f) If it is determined that the document is not complete, a complete document will be requested. If it is not received within 30 days of the date of such request, the account will be unfrozen and no further action will be taken with respect to the document.

(g) Upon receipt of a complete order that is either an original or a copy of a retirement benefits court order, the Board will review the order and will determine whether it is a qualifying order as described in § 1653.2 and, if it awards an amount to be paid from a participant's TSP account, the amount of the entitlement. The Board will advise all parties in writing of its decision.

(h) The Board's decision will contain the following information:

(1) The Board's determination regarding whether the court order is qualifying;

(2) A statement of the applicable statute or regulations;

(3) If the order is determined to be qualifying, a statement regarding the effect that compliance with the court order will have on the participant's TSP account; and

(4) If the order requires payment, a description of the method by which the entitlement under the court order was calculated and the circumstances under which payment will be made.

(i) The Board's decision will be final. There is no administrative appeal from the decision.

(j) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days from the date of a request described in paragraph (f) of this section, upon expiration of the 30-day period;

(2) If the order is a preliminary order or other order precluding payment from the account, as soon as practicable after receipt of a certified copy or original court order vacating or superseding such order (unless the order vacating or superseding the preliminary order itself warrants placing a freeze on the account);

(3) If the order is valid to award a payment from the TSP account of a participant under this part, upon payment; and

(4) If the Board determines that the order is not a qualifying order under this part, 45 days after issuance of the Board's decision. The 45-day period will be terminated if both parties submit a written request for such a termination to the Board.

(k) (1) the Board will hold in abeyance the processing of a court order payment pursuant to a previously approved qualifying court order if the Board is advised by one of the parties that the underlying court order is on appeal in the state court system and that the effect of the filing of such an appeal under state law or procedures is to stay the effect of the order.

(i) Proper documentation of the appeal and citations to legal authority which address the effect of the filing of such an appeal must be provided.

(ii) The parties will be notified that the processing of the court order is being held in abeyance and the account will remain frozen for loans and withdrawal.

(iii) In the absence of proper documentation and appropriate legal authority, the Board will presume that the provisions relating to the TSP in the court order remain valid and will proceed with the payment process.

(2) The Board must be notified in writing by one of the parties of the disposition of the appeal in order for the freeze to be removed from the account or for a payment to be made. The notification must include a statement regarding the effect of the disposition on the provisions of the original order relating to the TSP and a copy of the resulting document from the court must be provided.

(l) Multiple court orders pending before the Board will be processed in accordance with the procedures set forth in this part in the following order:

(1) As between conflicting qualifying court orders relating to the same spouse or former spouse, the Board will process only the court order bearing the latest date entered by the clerk of the court. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

(2) As between conflicting qualifying court orders relating to two or more former spouses, the Board will process the orders in the order of the dates entered by the clerk of the court, starting with the order bearing the earliest date, and continuing until the account is exhausted. If any order does not have a date entered, then the date the order

was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

§ 1653.4 Calculating entitlement under a retirement benefits court order.

(a) If the court order awards a percentage or fraction of the account as of a specific date or event, the amount of the entitlement will be calculated based upon the balance of the account as of the end of the month on or immediately preceding the date or event, plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of an entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply the percentage or fraction to the account, the amount of the entitlement will be calculated as described in paragraph (a) of this section, using the account balance as of the end of the month on or immediately prior to the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date signed by the judge.

(c) If the court order awards a specific dollar amount, the amount of the entitlement will be the lesser of:

(1) The amount the order awards; or

(2) The amount in the account as of the end of the month on or before the date specified in the order (or, if no date is specified, the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court, or, if the order does not contain a date entered or a date filed, the date signed by the judge) plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(d) Unless the court order specifically provides otherwise, the entitlement calculated under this section will not be credited with interest or earnings. If interest or earnings are awarded, the Board will use the monthly rates of return credited to the account unless the court order specifies a different rate. The TSP monthly rates of return may be either positive or negative. Interest or earnings will be calculated beginning with the month following the month-end valuation date used for calculating the entitlement and ending with the month prior to the month of payment.

(e) All entitlement will be calculated initially under this section including both vested and nonvested amounts in the participant's account. If at the time of payment the non-vested portion of the account has not become vested or has been forfeited, the entitlement will be recalculated using only the participant's vested account balance.

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided.

(b) A payment made pursuant to a qualifying court order will be made only to the person(s) specified in the court order. If payment is to be made to the spouse or former spouse of the participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Such a request must be made by filing the TSP form ''Spouse Election to Transfer to IRA or Other Eligible Retirement Plan'', which must be received before payment.

(c) In no case may a payment made pursuant to a qualifying court order exceed the participant's vested account balance, excluding any outstanding loan amount as of the end of the month preceding the date of payment. If the entitlement calculated pursuant to this subpart exceeds the participant's vested account balance (excluding any outstanding loan amount), then only the vested amount in the account (excluding the outstanding loan balance) will be paid.

(d) The entire amount of an entitlement created by a qualifying court order must be disbursed at one time. A series of payments will not be made even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all further rights to any payment under that order even if the entire amount of the entitlement could not be paid. Any further award must be contained in a separate court order.

(e) Payment cannot be made jointly to more than one person. If payment is to be made to more than one person, the order must separately indicate the amount to be paid to each.

(f) In order to make a payment pursuant to a retirement benefits court order, the Board's recordkeeper must be provided with the full name, mailing address, and Social Security number of the payee, even if the payment is being mailed to another address.

(g) If the payee dies before a payment is made pursuant to a qualifying retirement benefits court order, payment will be made to the estate of the payee, unless otherwise specified by the court order. If the participant dies before payment is made pursuant to a qualifying retirement benefits order entered before the participant's death, the order will be honored as long as it is submitted to the Board before payment of the account, regardless of whether the order was received by the Board before the participant's death.

(h) If the parties to a divorce or annulment are remarried, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(i) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order made in accordance with this subpart bars recovery by any other person pursuant to that order.

(j) Payments pursuant to qualifying court orders will be paid *pro rata* from the TSP investment funds, based on the balance in each fund on the date as of which the payment is made. The Board will not honor provisions of court orders that require payment to be made from specific investment funds.

Subpart B—[Reserved]

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3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.